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ABSTRACT

This document contains prepared statements and public testimony from the Congressional hearing on legal services for the elderly. Following opening statements by task force members, the testimony of Senator Heinz and Representatives Morrison and Wyden is given. Topics which are covered include the impact of the Legal Services Corporation proposed client eligiblity regulations. Testimony from panel 1 is offered highlighting personal experiences with legal aid needs and services. Testimony from panel 2 is presented offering the views of the American Bar Association, Pine Tree Legal Services (Portland, Maine) and the New York State Office for the Aging on the eligibility regulations. Testimony from panel 3, with representatives from several organizations on aging, provides information on the needs of and the impact of the regulations on nursing home residents and low income persons. Testimony from panel 4 is presented addressing the impact of the regulations on Asian and rural elderly persons. Panel 5 gives testimony on the impact of the regulations on blind, mentally retarded, and handicapped individuals. The appendices include prepared statements by the New York City Council, the National Social Science and Law Center, Mayor Koch of New York City, the National Association of Area Agencies on Aging, and the National Association of State Units on Aging. (BL)

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LEGAL SERVICES FOR THE ELDERLY: A NEW ASSAULT?

ED245160

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN SERVICES

OF THE

SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

SEPTEMBER 22, 1983

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CONTENTS

MEMBERS OPENING STATEMENT

Page

Chairman Mario Biaggi 1
Matthew J. Rinaldo 3
Olympia J. Snowe 4
Michael Bilirakis 4
Larry E. Craig 5
Claudine Schneider 6
Rick Boucher 6

CHRONOLOGICAL LIST OF WITNESSES

Hon. John Heinz, a U.S. Senator from the State of Pennsylvania 8
Hon. Bruce A. Morrison, a Representative in Congress from the State of Connecticut 10
Hon. Ron Wyden, a Representative in Congress from the State of Oregon 12
Panel 1: Public Witnesses:
Edna Sansone, Annandale, Va 18
Claudia McNeil, Alexandria, Va 19
Donald P. Bogard, president, Legal Services Corporation, accompanied by Dennis Daugherty and Gregg Hartley 22
Panel 2: Sources of Legal Services for Seniors:
Lyman M. Tondel, chairperson, Commission on Legal Problems of the Elderly, American Bar Association 39
John David Kennedy, executive director, Pine Tree Legal Services, Portland, Maine 44
Eugene Callender, director, New York State Office for the Aging 48
Panel 3: Aging Organizations:
Elma Holder, executive director, National Citizens Coalition for Nursing Home Reform 55
James Hacking, assistant legislative counsel, American Association of Retired Persons 57
Jacob Clayman, president, National Counsel of Senior Citizens 60
Panel 4: Special Categories of the Elderly:
David Affeldt, representative for National Pacific/Asian Resource Center on Aging, and Asociacion Nacional Pro Personas Mayores 64
David Raphael, executive director, Rural America 66
Alice Quinlan, Government Relations Director, Older Women's League 70
Panel 5: Disabled Community:
J. Scott Marshall, Director of Governmental Affairs, American Council of the Blind 74
Robert Plotkin, member, Legal Rights Committee, National Mental Health Association 78
Don Galloway, director, D.C. Services for Independent Living 82

APPENDIX

Additional material received for the record:
Carol Bellamy, president, New York City Council, prepared statement 83
Leonard H. Goodman, National Social Science & Law Center, Inc., Washington, D.C., staff memorandum 85
Hon. Edward I. Koch, mayor, city of New York, prepared statement 103
Raymond C. Mastalish, executive director, National Association of Area Agencies on Aging, Washington, D.C., letter 105
Daniel Quirk, executive director, National Association of State Units on Aging, Washington, D.C., letter 106

LEGAL SERVICES FOR THE ELDERLY: A NEW ASSAULT?

THURSDAY, SEPTEMBER 22, 1983

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON AGING,
SUBCOMMITTEE ON HUMAN SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:15 p.m., in room 2257, Rayburn House Office Building, Hon. Mario Biaggi (chairman of the subcommittee) presiding.

Members present: Representatives Biaggi of New York, Rinaldo of New Jersey, Snowe of Maine, Schneider of Rhode Island, and Bilirakis of Florida.

Staff present: Robert B. Blancato, staff director; Teresa S. Karamanos, director of research; Caroleen Williams, minority staff director; and Allison Bell, minority staff assistant of the Subcommittee on Human Services. Moya Benoit, staff assistant; and Bente Cooney, staff assistant, of Representative Biaggi's office.

Ms. SNOWE [presiding]. The hearing will come to order, please. We would like to begin with opening statements from the members of the committee. I might just add that the chairman of the subcommittee will be here shortly. He is attempting to offer an amendment on the floor to the Labor and Health and Human Services appropriations bill. In the meantime, if there are no objections, I will submit the prepared statement of Chairman Biaggi to be included at this point in the hearing record.

Hearing no objections, so ordered.

[The prepared statement of Chairman Mario Biaggi follows:]

PREPARED STATEMENT OF REPRESENTATIVE MARIO BIAGGI

Today we convene this hearing of the Human Services Subcommittee of the House Select Committee on Aging to specifically examine the impact of proposed client eligibility regulations upon the elderly. We are conducting this hearing on these August 29 rules for the purpose of receiving public input prior to the end of the comment period on September 28.

As Chairman, I take the position that these proposals, if adopted, will stifle group and individual legal efforts on behalf of the poor elderly of this Nation. I do not want to be witness to the spectre of over one-half and perhaps as many as two-thirds of the eligible elderly being turned away from the local legal aid offices.

My comments on these proposed regulations will call for their withdrawal. I will solicit other members of this Committee to join with me in this effort. For the skeptical among us, I believe that today's hearing will justify this position.

I take a special interest in this issue as the author of the 1977 amendment to the LSC reauthorization bill which charged the Corporation with the mission of providing legal services to the elderly and handicapped on a priority basis. Prior to this mandate, legal services to the elderly were virtually non-existent, despite the fact poverty was more common to this age group than any other.

(1)

Since 1977, legal services have grown and the elderly now represent about 14 percent of total LSC clientele. Since 1978, Title III of the Older Americans became a supplement for these services and today they remain one of three "priority" services provided under the Act. Eighty percent of the counties in this Nation are covered by an LSC-funded program, either in conjunction with local area agencies on aging, or independently through law schools, bar associations and other funded social programs.

The national network of legal services for the elderly stands as a monument to the commitment that Congress has made to protecting the Constitutional rights of the elderly to an adequate standard of living. The poor are equally entitled to justice as are the rich. In many cases, justice can only be achieved through litigation. Without the LSC, we deny them their right to public benefits, such as Social Security, SSI and Disability, in the event their right to these benefits is challenged. We deny them protection against scam and con games as well as consumer fraud, in the event they are duped into signing away their homes, their cars, or their assets. Our public witnesses today will give first-hand accounts of how legal services helped them from becoming homeless and penniless.

A 1980 report by the Corporation outlined thirteen barriers which the elderly and handicapped face in obtaining legal services. I contend that if these regulations are adopted, we will be putting up additional barriers, instead of breaking down existing ones.

It is with these points in mind that we approach the tightened eligibility criteria in the proposed regulations. They are a shortsighted squeeze play in the most basic sense. More importantly, the specific proposals are inconsistent with the other two major means-tested income support programs which serve seniors—SSI and Food Stamps. I believe that in the eyes of this Committee, these inconsistencies are paramount to heresy for they gut the essence of the program for the very people we want to serve.

The most onerous aspects of the proposed eligibility criteria include: A limit of $15,000 in home equity; automobile equity not to exceed $4,500; a cap of $30,000 equity in farmland; and counting income from IRA's and Keogh's.

To dramatize the home equity issue, the 1981 Annual Housing Survey showed that 83 percent of homes owned by the poor were valued above $15,000. For the elderly, this translates into 3.1 million homeowners who would be denied services under this proposed rule.

With respect to IRA's and Keogh plans, 1.048 million households below poverty—3.27 million seniors—would be denied access to legal services based on this criteria.

These are a mere piece of the total picture. Perhaps the most significant impact of these proposed regulations will be upon the institutionalized elderly. Legal services would be denied to nursing home residents by groups whose primary purpose is to protect the rights of 1.5 million of our most vulnerable seniors. These residents, by definition, are poor. To take direct aim at this defenseless population, is to further imprison people behind nursing home walls.

Section 1001 of the Legal Services Corporation Act charges the Corporation with the responsibility "to provide high-quality legal assistance to those who would otherwise be unable to afford adequate legal counsel." We should remember these words as we examine the proposed regulations today. I contend that at a minimum, these regulations violate the spirit, if not the direct intent, of the mission of the Corporation.

Equally as important is the fact that this past Monday, the House went squarely on record in support of increased funding for the Legal Services Corporation from the current $241 million to $296 million. I believe this increase presents convincing evidence that Congress intends to continue these services to the poor of this Nation.

I call upon the Corporation to withdraw these regulations for the simple reason that they do not reflect Congressional intent nor do they reflect the 1977 mandate for the elderly and the handicapped to insure access to legal services.

We cannot forget that across the street from this building, emblazoned on the facade of the Supreme Court, the highest court in our land, are the words "Equal Justice Under Law." Let us not forget that we are here today to ensure that this phrase retains its meaning, for all.

I look forward to the testimony we will receive today, including the testimony from the LSC, which I hope will further elucidate my position in this matter.

Ms. SNOWE. I will first yield to the ranking minority member of the Select Committee on Aging for his statement. I yield to Representative Rinaldo.

STATEMENT OF REPRESENTATIVE MATTHEW J. RINALDO

Mr. RINALDO. Thank you.

I would like to start by pointing out that Senator Heinz, who was scheduled to be our first witness had to leave because of a rollcall vote on the Senate floor, and I would like to request unanimous consent to introduce his statement in its entirety into the record.

Ms. SNOWE. Without objection, so ordered.

[See p. 8 for the statement of Senator Heinz.]

Mr. RINALDO. As a constant supporter of legal services for the poor, I want to certainly take this opportunity to commend Congressman Biaggi for calling this hearing on proposed Federal regulations governing the Legal Services Corporation client eligibility.

In my judgment, these proposed regulations are fundamentally flawed and should be withdrawn. I have studied them carefully. I notice, in fact, in reading Senator Heinz's statement that he feels primarily the same way, that the regulations should be withdrawn because they are bad news.

They are bad news, not just for the elderly who are the concern of this committee, but for citizens of any age needing legal assistance.

There is no question that we should prevent fraud and abuse in legal services as in any other Federal program, but these proposals are different. In fact, they are most disturbing to me because they would severely hurt persons seeking equal access to justice.

One particularly damaging provision would deny legal help to virtually anyone who has more than $15,000 worth of equity in a home and $15,000, in my district you can't—I guess you would spend about $15,000 for a garage nowadays, and this rule would impact especially hard on the elderly. 70 percent of older Americans own their own home, and 80 percent of older Americans own their own home free and clear of any mortgage, yet many of these same homeowners exist month to month on social security or perhaps SSI as their major and in many cases only source of income.

In my own State of New Jersey, officials estimate that over half of all low-income elderly clients would be disqualified from legal assistance if these regulations go through. With alternative funding sources of legal aid, including the Older Americans Act and the social service block grant remaining static and facing increased competition for other needs, it is imperative, in my opinion, that the Legal Services Corporation not slam the door in the faces of thousands of low-income Americans who may exercise their rights under the law in no other manner.

Once again, I want to conclude by applauding Chairman Biaggi and stating that this is a hearing that certainly ranks in my opinion as one of the more important hearings that we have held so far this year, in fact one of the hearings at which I just made an egregious error by saying that Senator Heinz was not going to testify, and I just put your statement in its entirety into the record.

Senator HEINZ. I can take the hint.

Mr. RINALDO. We are glad that you were able to make it back from your rollcall vote and personally participate in the hearing.

Thank you.

STATEMENT OF REPRESENTATIVE OLYMPIA J. SNOWE

Ms. SNOWE. Thank you.

I do want to thank Chairman Biaggi for initiating and conducting these hearings today in an effort to better evaluate the proposed Legal Services Corporation's eligibility regulations.

I am especially pleased to greet as one of our many witnesses Mr. David Kennedy, director of the Pine Tree Legal Assistance in Portland, Maine. Pine Tree Legal Assistance and another legal assistance organization, Legal Services for the Elderly, are two outstanding organizations that provide legal services for the poor, and often elderly, in our State. Over 5 percent of Mr. Kennedy's clientele are poor and elderly. This past year, Pine Tree Legal Assistance aided approximately 711 elderly persons who requested help.

Legal service programs are essential to the elderly in our State because a large number of senior citizens cannot afford to purchase legal representation privately. Legal services help these individuals to obtain basic necessities, such as health care, in-home support services, protective services, and benefits from programs like social security and SSI. The poor elderly can also call LSC contractual groups such as Pine Tree Legal Assistance to check possible physical and material abuses in institutions or in their own homes.

I understand that one of the most controversial of the LSC eligibility proposals makes no provision for elderly persons who purchased their homes many years ago, homes which have appreciated in market value through intervening inflation. A 1977 survey found that 42 percent of older persons receiving public assistance and who owned homes had a net equity value in excess of $15,000. Thus, a person whose only income is from SSI, but whose home is valued at $25,000—a home probably bought several years ago at a much lower price and a modest home by any standard today—becomes ineligible for legal assistance.

I am very interested in Mr. Kennedy's critique of the LSC proposals, as well as the comments of the other witnesses today.

With that, I would like to recognize Representative Bilirakis.

STATEMENT OF REPRESENTATIVE MICHAEL BILIRAKIS

Mr. BILIRAKIS. Thank you, Madam Chairman.

I have no prepared remarks. I would like to thank the chairman for calling this hearing. It is a very important hearing, of course, with very important subject matter. I come from the Ninth Congressional District, along the gulf coast of Florida, and my district consists of approximately 50 percent senior citizens.

That makes this subject even more significant, I think. I would like to enter into the record a letter from the Secretary of the Florida Association of Area Agencies on Aging regarding this subject matter.

In addition, I would like to merely place into the record the fact that I called my Bay Area Legal Services, as we call it in that area, to get some statistics and in 1982 in Hillsborough and Pasco Counties—I have three counties in my district—they closed 3,729 cases, approximately 40 percent of which were for people over the age of 60.

In 1983, those two counties up to August 31 of this year, closed 2,955, 36 percent were for those over age 60. In Pinellas County, for Clearwater and St. Petersburg, they closed something like 2,600 total in 1983 through August 31, and between 35 and 38 percent of those were for people over age 60.

So I am greatly concerned about this area and plan to attend as much of this hearing as I can this afternoon.

FLORIDA ASSOCIATION OF AREA AGENCIES ON AGING,
September 20, 1983.

Re Proposed rule change contained in the Federal Register, Monday, August 29, 1983, Paragraph: 1611.6, C.1.

OFFICE OF GENERAL COUNCIL,
LEGAL SERVICES CORPORATION,
WASHINGTON, D.C.

TO WHOM IT MAY CONCERN: The Florida Association of Area Agencies on Aging, which represents the interest of over two million people aged 60 and over in Florida, would like to register our opposition to the proposed change in eligibility requirements for services provided by Legal Services Corporation. According to information contained in the Federal Register of Monday, August 29, 1983, Paragraph 16116, C.1., a person having equity in a home and surrounding property which exceeds $15,000 would no longer be eligible for services provided by Legal Services Corporation. This proposed change would have a significant negative impact on elderly persons who may own even a modest home, but have few if any, other resources, and are in need of legal services. In essence they would have to lose their home in order to be eligible to receive such services. It is inconceivable that this was the intent of the proposed change; however, it would in fact be the consequence. The alternative, while not as devastating, may be that those individuals would simply do without needed legal help.

It is also important to point out that legal services offered under the Older Americans Act have not been expanding and are at best being maintained at current levels. With ever increasing demands for services, maintenance levels are simply not good enough.

Based upon the foregoing, the Florida Association of Area Agencies urges that this proposed change be withdrawn.

Sincerely,

PAT ROBINSON,
Secretary.

Ms. SNOWE. I thank the gentleman for his remarks.

Representative Craig?

STATEMENT OF REPRESENTATIVE LARRY E. CRAIG

Mr. CRAIG. Thank you very much.

I, too, want to add my note of appreciation to the chairman for conducting these hearings and bringing this to the attention of the Congress. I would say very openly that I have not always and in some cases do not remain a friend of the legal services organizations, but I do recognize the importance of the service they offer to the elderly, and the equity, that it is important that we maintain this organization for the seniors of the communities and the District we represent.

There is an illusion in large part about a good many of our elderly. If you simply look at the statistics of home ownership, percentage of home ownership and a variety of the things that we use to equate wealth in our Nation, and that I think has been clearly stated by some of my colleagues here this afternoon, that although the home may be owned and may be free and clear, that we find many of our seniors nearly unable to meet the taxes levied against that home, to heat that home and in large part to maintain it as one of their assets; that in fact they are homeowners living at the very edge of poverty.

I think in recognizing that the importance of maintaining the balance and an equity for our elderly through the Legal Services Corporation is critically important, and that is what I hope we can establish here this afternoon.

Ms. SNOWE. I thank the gentleman.

Representative Schneider?

STATEMENT OF REPRESENTATIVE CLAUDINE SCHNEIDER

Mrs. SCHNEIDER. I, too, share the enthusiasm and support for the chairman in calling the hearing, but also for the Congresswoman currently chairing for her support in enthusiastic investigation into the Legal Services Corporation.

As we all know, the Legal Services Corporation has been riddled with controversy, with accusations and abuse surfacing from time to time over the years. I therefore support all efforts to tighten to some extent the eligibility requirements to insure that those deserving benefit from the program receive it.

The changes on August 2, 1983, proposed by the Corporation, however, in my estimation go beyond what I consider necessary. I am troubled, for instance, by the proposal to limit clients to $15,000 in home equity and $4,500 in automobile equity.

I feel that such a limitation will adversely affect the likelihood of many deserving citizens, especially the elderly, from obtaining needed legal services.

I am concerned about the impact on those elderly citizens who own homes which exceed this amount. Statistics prove that many seniors live hand to mouth and under generally impoverished circumstances, yet refuse to sell their homes because of nostalgic and sentimental reasons, or strictly out of necessity.

Surely, access to needed legal services should not be judged solely upon such choices of an elderly person.

Again, I thank the chairman for his timely consideration of these proposals which will no doubt have an impact on the poor and elderly citizens of the Nation, and I look forward to the testimony by my colleagues, which I feel confident will clarify the extent to which elderly individuals will be affected.

While some changes in the regulations are very necessary, I think that our first priority must be to work with an eye toward fairness and equity for all citizens and allow them equal access and full opportunity to those legal services which they so rightly deserve.

Thank you.

Ms. SNOWE. If there are no objections, I will submit the prepared statement of Congressman Boucher for the record at this point. Hearing none, so ordered.

[The prepared statement of Representative Rick Boucher follows:]

PREPARED STATEMENT OF REPRESENTATIVE FREDERICK C. BOUCHER

Mr. Chairman, I would like to take this opportunity to commend you for holding these hearings in order to examine the impact of the proposed eligibility guidelines published in the Federal Register on August 29, 1983 by the Legal Services Corporation. By providing this public forum to hear the concerns of supporters of legal services, you have once again demonstrated your sensitivity and responsiveness to the

needs of the elderly poor, the handicapped, and the unemployed for whom this program was originally established.

I also appreciate this opportunity to share with you and the members of the subcommittee my particular concerns regarding the effect of the proposed guidelines on the people of Southwest Virginia. As a former member of the board of directors of Client Centered Legal Services of Southwest Virginia, I have had the opportunity to observe how important this program is to the people of the area.

Mr. Chairman, we are all aware that for three years, the Administration has tried to eliminate federal funding for legal services for the poor, the elderly, and the disadvantaged by abolishing the Legal Services Corporation. And for three years, Congress has tenaciously fought to maintain this effective program which provides legal representation to so many of our disadvantaged citizens for whom representation would be otherwise unavailable.

As a result of the President's persistent efforts, however, funding for the Legal Services Corporation (LSC) has been cut more than 25 percent over the past three years. The LSC contends that more stringent eligibility requirements are needed to "focus resources on those in most need." I recognize this concern; however, the proposed eligibility guidelines misconstrue the nature of the need which legal services is supposed to address and the context in which the need arises. As a result, the proposed regulations will make it extremely difficult for legal services programs to meet the legal needs of indigents.

It is important to note that existing regulations already require local legal services programs to carefully allocate resources according to the local perception of the severity of need for legal assistance (45 C.F.R. Section 1620). The proposed new guidelines impose on local programs a rigid interpretation of the need for legal services which fails to take into account specific local factors of need.

I am particularly disturbed by Section 1611.6 which dramatically alters the test for determining a potential client's assets. Currently, any person who receives public benefits is automatically eligible for legal services representation. The proposed regulations would subject those who have already proven their financial need to the same verification requirements as other potential clients. The additional documentation would be superfluous and a costly burden of proof on potential clients.

Section 1611.6 also establishes new restrictive limits on non-liquid assets which clearly discriminate against the elderly, the unemployed and all rural residents. The proposed guidelines establish for potential clients an assets test even more restrictive than the major means-tested income support programs, such as Food Stamps, Aid to Families with Dependent Children, and Supplemental Security Income. For example, this section requires that the value of an applicant's home above $15,000 be included in the computation of total assets. In addition, the value of family vehicles exceeding $4,500 must be considered part of the total assets. These limits fail to take into account the characteristics of life in rural areas such as Southwest Virginia.

In Southwest Virginia, the tradition of homeownership is important; few residents rent their homes, and few apartments are available. The asset limits specifically penalizes elderly citizens who may have paid for their homes years ago or may have inherited a family home. Equally important is the disadvantage that this restriction represents for unemployed individuals who may own their home, but do not have enough money to pay for food, clothing or utility bills.

Homeownership does not necessarily reflect an individual's ability to pay for private legal representation. Equity in a home cannot be easily converted into cash, particularly in the midst of an economic recession. More importantly, eligibility restrictions for legal services should not necessitate the sale of one's home in order to pay for legal representation.

The proposed limit of $4,500 for motor vehicles also discriminates against rural residents. In Southwest Virginia, where public transportation is virtually non-existent, motor vehicles are a necessity. Moreover, in mountainous areas, many residents must purchase vehicles equipped with four-wheel drive in order to negotiate their driveways in the winter months. These specially-equipped cars and trucks cost more than the average vehicle.

For the people of Southwest Virginia, the impact of these guidelines will be severe. The disproportionately high percentage of elderly and unemployed individuals in this area demonstrates a tremendous need for legal services. In the coal producing counties, for example, more than one out of every four adults are out of work. Yet, in these counties, it is estimated that the proposed regulations will preclude the representation of more than half and perhaps as many as two-thirds of the elderly poor and unemployed. In this time of rising need, we should not unnec-

essarily restrict access to legal services solely according to a standardized measure of "need".

The proposed regulations represent a fundamental change in the nature of the provision of legal services. Section 1001 of the Legal Services Act expresses the intent of Congress that the Legal Services Corporation "provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel * * *" The importance of legal need should therefore be a function of the nature of the legal problem and the impact of its resolution on the individual in need.

Under the proposed guidelines, the legal services programs will come to represent yet another welfare agency, not a program to provide fair legal representation. Increased documentation requirements will divert substantial staff and time resources to the verification of the eligibility of indigent clients who seek and need its services. The ability of legal services programs to uphold the original purposes of the Legal Services Corporation and to meet the legal needs of indigent clients will be hampered.

It is evident that the proposed eligibility guidelines will severely restrict the access of poor people to legal services and violate the basic foundations of the Legal Services Corporation. For three years, we have successfully closed the door to the Administration's attempts to eliminate funding for this important program. Let us work just as hard to resist this latest attempt to close the doors of legal services to the thousands of indigent Americans who need and depend on legal assistance.

I therefore join my colleagues in urging that these ill-conceived eligibility guidelines be withdrawn.

Thank you.

Ms. SNOWE. I would like to make some announcements.

The chairman's instructions for the procedures in this hearing are, because we do have an extensive list of witnesses here today scheduled to testify, we are asking that all witnesses confine their statement to 5 minutes. We regret this time limitation, but we have to leave this room approximately at 5 o'clock, so I would ask you for your indulgence in confining your remarks to 5 minutes a piece. Thank you.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. I commend you and the chairman for holding this hearing. I just want to make two points to this committee.

I think we all know that these rules could have some very profound effects on senior citizens. I am wearing my hat today as chairman of the Senate Special Committee on Aging. I note that many have already singled out the home equity rule as having a disproportionate impact on the elderly; and so it would.

Nearly two-thirds studies of those who would be disqualified would be elderly persons, and it looks as if as many as a third to a half of the elderly persons now eligible to receive legal services would be disqualified.

Those are statistics that the committee can get from many other sources. I want to make the point that that proposal runs counter to everything we in Congress have done for the last two decades.

Prior to 1976, when it came to determining SSI eligibility, the law was that you would ignore any value of a house that was under $25,000 and only count, for resource determination purposes, that portion of the fair market value in excess of $25,000.

That was in 1976, before the great real estate boom of the late seventies and early eighties. Were we to adjust that for inflation, we would be saying today that one should not count anything below $40,000 or $50,000.

In 1976, we went even further than that and we amended the law to totally exclude the home as a resource. I would like to suggest that there were two very fundamental reasons, having to do with the cultural aspects of the deep values of our society, going beyond the notion that a home is every man's castle.

First, that it is highly desirable to encourage independent living for the elderly, and that independent living is best fostered through the ability to live in one's own home. It is better to have a home than to be a renter; and it is better to be renter than a resident of subsidized Federal housing.

On a more basic level, the very generation that would be affected by these rules is the generation we have to thank most sincerely for preserving the notion that saving is good, that thrift is good, and that it is a bad idea to spend as if there is no tomorrow.

Frankly, what these rules really say, at bottom, is that you are better off if you spent everything and have nothing, because then you would get legal services. And were we to allow the legal services members, who I fear have modest qualifications for promulgating these rules, to move forward, I fear we would undermine this very basic tenet.

My last point regards the other rule that demands specific attention, as far as senior citizens are concerned; the rule that provides that the assets of all members of the applicant's household will be counted toward the limit.

Two-thirds of the elderly live in a family setting. Many of them live with unrelated individuals. They often maintain separate budgets. According to our studies, this proposal alone could disqualify 4 million poor elderly.

It would be just one more measure which acts to fragment the family, to fragment people who care, and to throw the burdens of caring on society, and not on the friends and family who want to help.

We follow the lead of the House Select Committee on Aging. About 2 weeks ago, we held a hearing on Alzheimer's disease in New York. It is a fact that over half the people with Alzheimer's disease, because they do not qualify for any kind of assistance for nursing home institutionalization, must rely on members of their family for care.

It is proposals like these that I believe make it more and more difficult for us to do what is not only humane, but what is right.

Thank you, Madam Chairman.

Ms. SNOWE. Thank you, Senator Heinz.

[The prepared statement of Senator Heinz follows:]

PREPARED STATEMENT OF SENATOR JOHN HEINZ, CHAIRMAN, U.S. SENATE SPECIAL COMMITTEE ON AGING

I want to thank Congressman Biaggi and the other members of the Committee for holding this important hearing. I am greatful for the opportunity to address and issue of great concern to me—the continuing ability of older persons who are poor and in need of legal assistance to receive the legal help they need.

The elderly, because of difficulties of access and unique legal problems, have a special need for legal assistance. This special need was explicitly recognized by Congress in 1977 amendments to the Legal Services Corporation Act, which incorporated priorities for the provision of legal services. This need is greater today than ever, when the elderly are faced with a burgeoning array of legal problems, due in part,

to rapidly changing public benefit programs. The fulfillment of that need is now threatened by regulations recently proposed by the Legal Services Corporation.

These new proposals would unfairly tighten current eligibility criteria, sharply narrowing access to legal services. Elderly persons would be especially hard hit. Stringent new asset limits will make it much more difficult for elderly persons, the vast majority of whom own their homes and who often live in family settings, to obtain legal aid.

I have asked experts at the University of Michigan to simulate the effect of the assets test on the elderly population now eligible for legal services. What they found was startling. If both the home equity test and the liquid assets test are put into effect, it could eliminate nearly half (45 percent) of the currently eligible population.

The home equity rule, in particular, will have a disproportionate impact on the elderly. There are close to 3 million elderly homeowners now living below the poverty line. A Special Committee on Aging staff analysis reveals that a third of those persons over 65 with no other tangible resources may be barred from receiving free legal assistance solely because they own a home valued at more than $15,000. Nearly two thirds of those disqualified have homes valued between $15,000 and $40,000—modest homes by any standard.

This proposal runs directly counter to every recent expression of Congressional policy on the same question—the use of home equity as a measure of eligibility for entitlement programs. Amendments to the Social Security Act are instructive. Prior to 1976, the Social Security regulations provided that the value of a home would only be excluded from SSI resource determinations to the extent that its current fair market value did not exceed $25,000. In 1976, the law was amended to totally exclude the home as a resource. The legislative history indicates Congressional concern that those blind, disabled, and aged persons who had managed to save and purchase a home, not be penalized and forced to sell or move out of their home in order to be eligible.

We have recognized the desirability of assisting as many people as possible to live independently and to remain in their communities. Our commitment to the well being and care of our elderly has included the provision of adequate housing and the prevention or reduction of inappropriate institutional care. These regulations, if implemented, will impose upon the elderly a cruel dilemma; either live independently in adequate housing or sell your home in order to be able to purchase needed legal services.

Because of its potential disproportionate harm to senior citizens, another proposed rule demands our attention. That rule provides that the assets of all members of the applicant's household will be counted toward the limit. Two-thirds of all elderly persons live in a family setting. They, and those who live with unrelated individuals, would most often be blocked from obtaining legal help, even though they maintain separate budgets. This provision alone could disqualify 4 million poor elderly. It would also act as a further disincentive for families who try to assume the burdens of care for their older members.

Let me use an example to illustrate what these regulations mean in real, human terms, based on an actual case—an elderly widow, receiving SSI benefits, residing in downtown Pittsburgh, in a home she and her husband bought and paid for through hard work and sacrifice over many years. The value of her modest home has climbed, in recent years, to $35,000. A person appointed to receive her monthly benefits on her behalf and to manage her financial affairs, diverted the widow's monthly benefit payments and spent the money on herself. Her Social Security office helped her to stop payments to her representative payee, but the only way that she could retrieve her money was through her local legal services program. They helped her regain her benefits. Under the proposed regulations she would not be able to get the legal help she so clearly needed.

I question whether the LSC is fully cognizant of the extent of negative impact that these proposals will have on older Americans. Our analysis indicates how devastating these new criteria will be on their ability to receive legal help. I call upon the Legal Services Corporation to withdraw these ill-advised proposals as patently discriminatory against older Americans.

Ms. SNOWE. Congressman Morrison?

STATEMENT OF HON. BRUCE A. MORRISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. MORRISON. Thank you, Madam Chairman.

I would like to congratulate the select committee for convening this hearing. I am currently a member of the Committee on the Judiciary and of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, which has jurisdiction over the authorization of the legal services program, so I am especially happy to be able to appear before you today.

Before being elected to Congress last fall, I served for 10 years as a legal services attorney and staff member in New Haven, Conn., for the last 5 years as executive director of the association, so I have experience with the administration of the eligibility rules as they have existed heretofore.

I believe that the changes that are proposed are going to be very damaging to the effectiveness of local programs in serving the elderly, as well as some other groups. To focus first on the questions of how assets are treated, you have heard, you will continue to hear, especially about the elderly, that they have assets which they have accumulated over a lifetime, which are not liquid in nature, such as automobiles and homes and which cannot be turned into resources for the purchase of legal services.

The treatment of assets in these regulations violates what should be the basic standard for any means test, and that is whether the person can actually, because of the particular assets to be counted, afford to purchase the service.

People cannot borrow on their home when they are elderly, and they cannot borrow on their home if they don't have substantial income to pay back a loan, so as a practical matter, we are talking about assets that are not available. This is not a rule to test whether somebody can afford legal services, but a rule to take services away from the elderly.

Another group that will be affected is the unemployed, people who are for a short period of time without income, but who may have nonliquid assets. Taking away legal services eligibility from those people can mean taking away their ability to get back on their feet.

I would like to move to another aspect of this regulation, and that is the squeal rule, as it could properly be called, that requires that legal services attorneys divulge confidential information about their clients to the Legal Services Corporation.

One of the strengths of the legal services program has been the confidence that it has in the client community, elderly, and nonelderly alike. That confidence is based on a trust and a belief that these people will represent the client in the best traditions of an advocate and in a confidential relationship.

There is no need for this breach of confidentiality to enforce eligibility rules. Using all of the principles of client confidentiality in our program and other programs like it around the country, we were always able to investigate claims of ineligible clients. The program had the responsibility to terminate services if it were found that a person was ineligible who was thought to be eligible when the representation began.

This is the way to handle this problem consistent with client confidentiality. To undermine the strength of the lawyer-client relationship is to really do violence to one of the real strengths of this program.

Let me say something about the centralization of control of the eligibility process which this regulation represents. The legal services program is a locally controlled program. Boards of directors of nonprofit agencies at a local level make decisions.

There are strictures at a national level, guidelines, but the decisions about priorities and who is to be served and how to apply eligibility standards at a local level are decided locally.

With all the rhetoric about local control, it is ironic that appointees of the Reagan administration are the ones who are looking for an eligibility rule that is much less respectful of local decisionmaking with respect to who in fact can afford legal services and who should be given the highest priorities for those services.

I would suggest that the committee should take note of the composition and status of the Board of Directors which has proposed this regulation. Despite the concern of this Congress that the Legal Services Corporation be an independent agency with directors confirmed by the Senate, we have had now for a period of 2 years a board, not 11 members confirmed by the Senate, but 4 members confirmed by no one, people who have not shown any commitment to the preservation of this program.

I think that that should give this committee special reason to comment and take action and not to defer to that body.

Mr. FRANK [presiding]. Thank you.

Mr. Wyden?

STATEMENT OF HON. RON WYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WYDEN. Thank you very much, Mr. Chairman.

I listened very carefully to the fine statements of my colleagues. I think we have a bipartisan consensus for putting these cruel proposals into the legislative ashcan, Mr. Chairman, and I am going to be brief.

My particular interest in these issues stems from my work with the elderly during the 7 years before I came to Congress. During that time, I organized several programs, coordinated by legal services offices, where lawyers from the private bar volunteered their time representing low-income seniors with legal problems. These programs operated in both Eugene and Portland, Oreg. Several hundred lawyers from around the State were involved, and both programs were coordinated by local legal services offices. In addition, for 2 years I served as the full-time director of Oregon Legal Services for the Elderly.

I think my colleagues focused well on the absurd requirement that there be $15,000 as the eligibility criteria. For all practical purposes, that would lock the doors to legal services for the majority of low-income senior citizens in this country.

In 1981, the White House Conference on Aging, for example, reported that 70 percent of the seniors in this country live in their own homes, and 84 percent of those own them outright, and there is just no question that the vast majority of those homes are worth more than $15,000.

I think it would just be grotesque to ask the senior citizens of this country, who have scrimped throughout their lifetime, to now

go out and sell their home in order to be able to secure justice under our laws.

I think it is also worth noting that Congress has rejected home equity as a means test in both the food stamp and the SSI program for the very reason that we are talking about, that many seniors with a low income may nonetheless own their own home.

Let me touch for a second on the concept of requiring seniors to count the income of the family with whom they are living when calculating eligibility.

First, it would make it even more difficult for sons and daughters who want to bring their older parents into their own home, rather than having them in a nursing home, to foot the bill.

Because the older parent might no longer qualify for legal assistance if they live in that home, the son or daughter would be forced to pick up the cost of legal assistance for the parent, thus increasing their cost often beyond their ability to pay.

Moreover, if the son or daughter is unable to foot the bill, the senior citizen might have no choice but to accept institutional care where there is no such legal services eligibility requirement.

If that were to happen, not only would the senior citizens lose their independence, the taxpayer would end up paying more because we all know that the taxpayer is paying for the bulk of institutional care in this country.

The last point I want to make, Mr. Chairman, deals with the eligibility change which would deny funds to groups which represent eligible persons, but which are not composed of eligible persons themselves.

This is a flagrant discrimination, Mr. Chairman, against nursing home patients. Nursing home patients are often much too frail to take care of legal matters themselves. As a result, concerned citizens, often the children of the patients, form groups to protect the interests of the patients.

Under current regulations, these groups have access to legal services funds based on the eligibility of the poor, elderly nursing home patient.

The proposed regulations would make it impossible for these kinds of advocacy efforts to qualify for legal assistance and in effect, what we would be doing is denying nursing home patients from around this country access to equal justice.

One last point, and that is that the administration has consistently said that human services programs ought to be controlled at the local level. In my estimation, there is no human services program that better embodies the concept of local control than legal services.

Every legal services office is administered by a local nonprofit board of directors, and they can tailor what they are doing to the needs of their community.

These proposals place the heavy hand of the Federal Government even more directly on the day-to-day operations of legal services programs. New eligibility requirements clearly stifle local control, and I think it is pretty clear.

Mr. Chairman, instead of trying once again to kill the program in one fell swoop, these proposals try to inflict death by 1,000 cuts, a change in a rule here, a cut in a service there. It all flies in the

face of Congress' clearcut desire to provide legal services to low-income seniors.

My colleague Mr. Morrison, and Senator Heinz, said it so well that I will conclude, but I very much appreciate your leadership in this area on a terribly important subject.

[The prepared statement of Representative Wyden follows:]

PREPARED STATEMENT OF REPRESENTATIVE RON WYDEN

Mr. Chairman, thank you for allowing me to testify before you today on the new client eligibility requirements for the Legal Services Corporation.

My particular interest in these issues stems from my work with the elderly during the seven years before I came to the Congress. During that time, I organized several programs, coordinated by legal services offices, where lawyers from the private bar volunteered their time representing low income seniors with legal problems. These programs operated in both Eugene and Portland, Oregon. Several hundred lawyers from around the State were involved, and both programs were coordinated by local legal services offices. In addition, for two years I served as the full-time director of Oregon Legal Services for the Elderly.

Mr. Chairman, I have seen firsthand the value of legal services programs to the elderly and, on the basis of this direct, firsthand experience, I believe the new eligibility rules promulgated by the board of directors of the corporation are a serious mistake.

These rules threaten the future of legal services for the elderly and reflect a basic misunderstanding of how this program operates and of its significant contribution to the network of services for the aging.

I would like to focus today on those proposed regulations which I think are potentially most harmful. The first of these is the stipulation that "an otherwise eligible individual" may be denied aid if he or she has more than $15,000 equity in a home. If this rule were adopted, Mr. Chairman, it would, for all practical purposes, lock the doors to legal services for the majority of the low-income senior citizens in this country.

The 1981 White House Conference on Aging reported that 70 percent of the elderly in this country live in their own homes and 84 percent of those own them outright. There's no question that, at present, the vast majority of those homes are worth more than $15,000. That's true of my Congressional district—and virtually any other in the country.

Mr. Chairman, most senior citizens have toiled a lifetime to buy these homes—have scrimped and saved to get to the point where they own them outright. In most instances, the current value of the house is several times the price they originally paid for it. All of us understand that with the current inflated price of housing, that's just the way things are.

I think it would be grotesque to ask the senior citizens of this country who have worked so hard to get their own home to now sell it in order to be able to secure justice under our laws.

The Congress has already rejected home equity as a means test in both the food stamp and supplemental security income program because many senior citizens who otherwise have a very low income nevertheless own a home. It should do likewise in the case of legal assistance—that is, it should ash-can the proposal as soon as possible. To do otherwise—to deny legal assistance to seniors if they have more than $15,000 equity in a home—is too cruel to contemplate.

The second proposed eligibility change with which I take exception would require seniors to count the income of the family with whom they are living when calculating eligibility. To do so, Mr. Chairman, would defeat all our efforts to help senior citizens maintain as much independence as possible.

First, it would make it even more difficult for sons and daughters who wish to bring their older parents into their own home (rather than having them enter a nursing home) to foot the bill for doing so. Because the older parent might no longer qualify for legal assistance if they live in that home, the son or daughter would be forced to pick up the cost of any legal aid for their parent—thus increasing their own costs, perhaps beyond their ability to pay.

If the son or daughter is unable to foot the bill, the senior citizen may have no choice but the accept institutional care where there is not such legal services eligibility requirement. And should that happen, the senior will not only have lost their independence, but the taxpayer will incur more expense.

The third proposed eligibility change which concerns me would deny funds to groups which represent eligible persons, but which are not composed of eligible persons themselves.

This regulation clearly discriminates against nursing home patients who are often much to frail to take care of legal matters themselves. As a result, concerned citizens or children of these nursing home patients will form groups to protect the interests of the elderly patients. Under current regulations, these groups have access to legal services funds based on the eligibility of the poor, elderly nursing home patient. The proposed regulations would make it impossible for these kinds of advocacy efforts to qualify for legal assistance, and thus, in essence, deny the intended recipient—the nursing home patient—access to equal justice.

Before I wrap this up, Mr. Chairman, I would like to make one additional point. This Administration has consistently said that it wants to see human services programs controlled at the local level. There is no human services program that better embodies the concept of local control than legal services.

Each legal services office is administered by a local, non-profit board of directors, which can tailor their program to the needs of the local community. By placing the heavy hand of the federal government even more directly on the day-to-day operations of legal services programs, these new eligibility requirements would clearly stifle such local control—a result which it would seem the Administration would not support.

In closing, Mr. Chairman, I would urge the Members of the Committee to recognize these proposed changes in eligibility requirements for what they are: a back-door attempt to kill Legal Services.

Instead of killing the program in one fell swoop, this new policy would kill it with a thousand cuts. One change in a rule here, a cut in service there—all of which flies in the face of Congress' desire to provide legal service to the poor and elderly of this country.

The need for a strong Legal Services program has been documented time and time again. One-quarter of the elderly population is poor or near-poor. Like other citizens, the elderly need legal assistance with housing issues, consumer problems, estate planning and drawing up of wills.

But the argument that the services performed by the Legal Services Corporation could be picked up by the private bar on a gratis or sliding-fee basis just simply won't hold water.

As I mentioned earlier, over the years, I set up two volunteer legal programs for the elderly in Oregon using the private bar. The response of the private bar was tremendous—they really came through. These attorneys willingly—and competently—handled wills, estates, transfers of property and many routine matters. But, there were many cases they simply couldn't handle—including SSI, Social Security, nursing home cases and the like—typical kinds of cases our elderly fact everyday. The result was that the private bar had to give those cases back to legal services.

In other words, Mr. Chairman, legal services is a lifeline without which many senior citizens cannot survive. However good-intentioned the private bar might be, they simply cannot meet all the legal needs of the poor—more because they are not trained in these areas than anything else.

If Congress does not believe that Legal Services should be killed outright—as it has indicated each time the issue has come before it—then it must not stand by while it is slowly strangled to death.

The proposed regulations before use would precipitate that kind of slow death—and as such, should be withdrawn immediately by the Legal Services Corporation's board.

Thank you for the opportunity to testify, Mr. Chairman.

Mr. FRANK. Thank you.

You say it seems to be clear as one dealing with the legal services for 2½ years that this is the third phase in the administration's approach.

First, they wanted to abolish the program. When they couldn't abolish it, they decided not to fund it. Then they couldn't abolish it and they couldn't get away with not funding it.

Now, they just don't want anybody to be eligible for it. It seems to me we will be in the ironic position of them telling us that we are trying to give more money than is needed while they then turn

around and say, we must cut people who are now eligible because there isn't enough money.

It is a self-fulfilling catch-22 with which we ought not, I think, to spend excessive time. Let me ask, because both of you have done great leadership work in legal services, rough percentages of the kinds of people you served when you were involved in running legal services programs, what order of magnitude of effect would these regulations have, in your judgment?

Mr. MORRISON. About 20 percent of our program's client caseload was elderly people, and I would say that at least half to three-quarters of those people would have been ineligible under the proposed regulations.

Among the nonelderly the percentage would probably be about a third of the remaining 80 percent.

Mr. WYDEN. I worked specifically in the area of legal services to the elderly. The evidence shows that one-quarter of the elderly population is poor or near-poor, and these are people that are walking on an economic tightrope. They are balancing their food costs against their fuel cost, and their fuel cost against the cost of medical care.

These proposals just push them off the tightrope. As I said, if that $15,000 requirement went through, we would just be locking the doors to equal justice in this country for the elderly.

Mr. FRANK. It occurred to me as we were talking about what happens with people in nursing homes that if someone was in a nursing home that was inappropriate and in fact, the resident of the nursing home was injured by the nursing home and was indigent and legal services wanted to sue on that person's behalf, they would have to stay in the nursing home that they were suing because if they went home and lived with the kids, they wouldn't be eligible.

That seems to me an example of the kind of attack on the fundamentals of the program we have. I will call on Mrs. Snowe at this point.

Ms. SNOWE. I thank the chairman and thank both members for their contribution to this hearing today, because I know of your experience, Congressman Morrison, with legal services and Congressman Wyden with the elderly.

To your knowledge, have you ever known the Legal Services Corporation to make proposed changes that had wide ramifications with fewer than the full contingency on the board? I understand Legal Services Corporation now has four members on the board who have not been confirmed and the total contingency on the board approximates 11 members.

Have you known this to be unusual?

Mr. WYDEN. The procedures that have been used with this administration are unprecedented in the area of legal services. I have been associated with this program since early in my law school career, and I have never seen the kind of situation that you described—recess appointments, less than a full complement of members on the board—this is an unprecedented way to run a program which, as I said, operated on the principle of local control.

It is exactly what the administration said they wanted. It is not run from Washington, D.C., it is run at the grassroots level by local

boards and these decisionmaking processes are unprecedented. And I have been involved with this program for 10 years.

Mr. MORRISON. The Legal Services Corporation was formed by Act of Congress in 1974, and throughout its entire life, up until 1981, always had a full 11-member board of directors, and always had process of issuing regulations that was highly consultative in nature, that would involve the local programs and the ABA and other groups in ongoing open dialog, and changes were often made to accommodate the realities of the program.

That has changed completely. The absence of a confirmed board for this extended period of time, the absence of a full board is a new situation. Indeed, last year, in the continuing resolution, the Congress saw fit to deny certain powers to this board in terms of reshuffling dollars around the country, which they had intended to do.

So I think this is another example of a board exceeding what its authority ought to be, given its circumstance, and it hadn't happened before 1981.

Ms. SNOWE. Given your experience with legal services in the past, to your knowledge have they ever proposed changes of such magnitude that have imposed as tremendous ramifications on its clientele?

Mr. MORRISON. No. The last time that regulations made this much difference was at the very beginning when the Corporation was writing its first regulations.

Ms. SNOWE. Thank you both very much.

Mr. FRANK. Mrs. Schneider?

Mrs. SCHNEIDER. I would like to direct my question to my colleague from Connecticut. With your experience as a lawyer with the Legal Services Corporation, is it true that the Legal Services Corporation Act does not provide statutory authority for the Corporation to establish an asset test?

Mr. MORRISON. As I recollect, there is no asset test authorized by the act. It is not precisely forbidden, but on the other hand, it has come to be generally understood—and in fact in testimony before our subcommittee of the Judiciary Committee, the president of the Corporation agreed with Mr. Frank—that the rule that ought to govern is that if Congress does not authorize a particular kind of restriction, that restriction ought not to be considered available.

Mrs. SCHNEIDER. So that the authority that we are talking about now to impose these proposed national requirements really is rather arbitrary?

Mr. MORRISON. As they are proposed, yes. There was an authorization that assets could be looked at by a local program in conjunction with other things, and I think that at that level it is not contrary to the act, but I think that pinning down precise national asset limits when those have not been prescribed in the act is not appropriate.

Mr. FRANK. Thank you both.

Our next panel consists of Edna Sansone and Claudia McNeil. I would just like to introduce these witnesses. These are two public witnesses, actual real-life, bonafide citizens of the United States of America who have been involved with this program and have in fact been forced by circumstances beyond their control, and cer-

tainly beyond their choice to avail themselves of the legal services program and we want to hear from them, because we will get a sense from them of how these new restrictions will be affecting a previously eligible population.

To the Chair's right is Mrs. Sansone who was, we understand, victimized by a real estate swindle; and Mrs. McNeil, who had an experience involving an application for a Federal home improvement loan and some negative experiences with contractors; and in both cases legal services was an essential part of their effort to defend themselves.

We have been joined by Mr. Wyden, who in addition to having been a member of legal services, is also a member of this committee.

Mr. WYDEN. Thank you, Mr. Chairman.

Mr. FRANK. Mrs. Sansone, let's begin with you.

PANEL 1: PUBLIC WITNESSES, CONSISTING OF EDNA SANSONE, ANNANDALE, VA.; AND CLAUDIA McNEIL, ALEXANDRIA, VA.

STATEMENT OF EDNA SANSONE

Mrs. SANSONE. Thank you for letting me be here, Mr. Chairman. I have a story to tell. I was at my home one morning, and I saw a car drive up into my driveway. The gentleman got out and came to my door, and introduced himself. He said, "Can I come in?"

I said, "I don't really know you, but OK." He kept talking until he got in. He was a real estate man. He let himself in and he asked, did I want to sell my property and I said, I wasn't sure, I didn't know.

We kept talking. So I said, "I will have to ask my daughters first, before I sell." There wasn't anyone there, but him and myself. He kept talking and I said, "I can't make up my mind today, I will let you know."

So he came back; he came back for 3 weeks. He just pressured me and he talked and talked and I said, "Well, I am not sure yet, because I won't have any place to go. I have been at this place for 20 years now." I said, "I am scared to sign without an attorney in the house because I don't know who you are." I said, "I don't know yet. I can't make up my mind."

So, finally, he got me to sign and I signed this trust for $32,000, and he went away and promised me he would give me $50,000 cash for my home. I thought I was going to be rich. Instead, when he came back in a couple of days, he said the first one didn't go through, so he got another one.

He said, "I can only bring you $9,850." I said, "That is not $50,000 like you promised me." I got disgusted but I took the check.

He said, "I will bring more back." He went away, and he was sending me checks every month $400 a month, but the checks were no good, they were just paper. But I kept those where they wouldn't get lost. I said, "I am going to ask somebody."

I called my friend, Mrs. Penny, and she told me what to do. I said, well, this man left and he didn't return to tell me anything about what he was going to do, but I heard he had sold out and gone and left me the $32,000 to pay.

I didn't have any money whatsoever in the bank to pay this mortgage, so I said, "Well, I don't know what I am going to do. I am going to lose my home." I didn't have any money.

So he went and didn't return to tell me anything. So I asked Mrs. Penny and she told me about legal aid and legal aid today is the one that helped me, and only through aid, I would be on the road with no home or anything.

Mr. Arrington left town with the $32,000, which he was going to use to build around my home and he didn't, he left with the money, so I didn't even see him any more until someone notified me that he had left.

I didn't know what to do or what to say, an accountant told me what to do, and his wife called legal aid and legal aid brought me through. Tomorrow I will get my house back through legal aid help.

They got him. He was gone for about 18 months, and I never heard from him, and I had to pay this mortgage, and I didn't have any money whatsoever, because I live on social security. Without legal aid, I don't know what I would have done.

They are the ones who brought me through to get my house back to him, and I am grateful for it. I didn't have any money in the bank whatsoever, any stocks or bonds or anything. But they have got this gentleman. he is paying the mortgage now, and I am glad, through legal aid, only through their help, and I am glad today that someone told me about it.

I didn't even know there was such. I am glad. I am getting my home back because I wouldn't have had any place to go, and no money. I live on social security. That is what I live on, other than just the home.

Mr. FRANK. Thank you, Mrs. Sansone.

Ms. Claudia McNeil?

STATEMENT OF CLAUDIA McNEIL

Ms. MCNEIL. Thank you, Mr. Chairman, for asking me to be here. I came in contact with the Fairfax County Housing Authority Redevelopment, and in 1981, they had in the newsletter an advertisement for a grant, and I, being retired and on disability, I thought I would ask for the grant to help me do some work on my house.

And the grant was approved for $5,000—I think the grant was for $5,000. And of course, after the grant was approved, the specialist, Mr. Martel—he was the coordinator on this—came out and saw the work that had to be done, I wanted gutters put on and, of course, there were some cracks on the outside existing walls of the house. The house was built in 1947.

And, of course, we were the first ones that lived in this house. And so, the house needed some work done, and I was not working. I was all for the grant, and he came out and said I could get the grant and that would fix the house up.

We came inside and he wanted to do other things like putting in cupboards and cabinets and adding on an additional room, and that was running way up into money, and I turned that down.

So he came back with another proposal, and I admit, my house did need some work done on it. So he came back and they took up the floors, they knocked out the walls and put on a roof and patched up the existing cracks that were on the walls and went away and left me with a temporary floor. He had taken up all my floors and put down just a thin plywood floor.

That is all there is between me and the ground. Underneath my house, the heat ducts are laying on the ground in one area of the house when they took up the floors in the living room, kitchen, and in the dining room. Of course, I had to get out of the house, and I couldn't get back there to see what was going on.

I know nothing about building. Everything was turned around; my house is in a mess, it is uncomfortable to live there, and I have been trying to get them back there to correct these things, and I just couldn't do anything about it, so I went over to the community center, and they told me about legal aid. I contacted Mr. Fleury with legal aid, and he has been working with them and with me to try to get them back there.

My back door has been open since June 1982, and I cannot close it. I can't lock it and it is just uncomfortable. I can't live there.

Mr. BIAGGI [presiding]. Is the matter in court?

Ms. MCNEIL. No. We are working with them to try to get them back, sir, to correct these things. And Mr. Fleury is working with the specialist.

Mr. BIAGGI. I want to thank you very much, Mrs. McNeil.

First, I would like to take this opportunity to thank my colleagues, Mr. Frank and Mrs. Snowe, for chairing in my absence, and apologize to all assembled because of my absence.

I was on the House floor dealing with an amendment that would produce additional funding for the elderly in the home-delivered meals program. It was just an inordinate and unexpected delay, but we had the advantage, I understand, of three witnesses, Members of the Congress, as well as these two ladies who obviously would have been left destitute and frustrated, and, to say the least, heartbroken without the services of legal aid.

The purpose of this hearing is to urge the administration to withdraw its proposed regulations. We are 5 days away from the end of the comment period, and we are looking at the possibility of a drastic reduction in service to the needy, especially the elderly, by establishing a means test which I am advised will reduce the amount of individuals eligible by almost 50 percent. Rather than decreasing the service, it would seem to me in the light of its effectiveness and its human impact that it should be increased. I am hoping that after this hearing is over that I will be joined by other members of this committee as well as other Members in the House in urging that these promises that these proposals be withdrawn or to say the very least, modified substantially.

As someone said, you can't live with bread alone, but here is a service that has been established and proven to be very effective, and I want to thank you Mrs. Sansone for your testimony, and Ms. McNeil.

Any questions?

Mr. FRANK. Yes, Mr. Chairman.

I very much appreciate your point about the need for these to be withdrawn. For fundamental policy changes like this to be made by a board not confirmed—this is not a partisan issue.

Legal Services came under the Ford administration first, and it is the Republican Senate that has declined confirmations.

I would hope that if we can't get Legal Services to withdraw these, that we would take action with a continuing resolution. We might simply have to enact an amendment that says they can do no changes in the regulations dealing with eligibility or in certain other areas unless we can get an agreement that these be withdrawn.

Mrs. Sansone, I just wanted to ask you, given your situation, you had been cheated out of your house. Ironically, you were cheated out of the asset, the possession of which, under these rules, would keep you from defending yourself, but if someone had come to you and said, "That fellow is a crook and he has done something to you that the law will stop," go to a lawyer and a lawyer will make him give you back your house or your money, and there was no Legal Services Corporation, what would you have done?

Mrs. SANSONE. I couldn't have done it because I had no money.

Mr. FRANK. Your sole asset was this house worth approximately $50,000 after years of your career?

Mrs. SANSONE. Right.

Mr. FRANK. If it weren't for legal services, and a situation in which this person came and tried to swindle you out of your house by taking unfair advantage of you, if it weren't for legal services, he would have gotten away with it, because you would not have been able to take legal action to defend yourself?

Mrs. SANSONE. That is right. Mrs. Galloway helped me through this.

Mr. FRANK. They would have said, under the regulations, you are much too wealthy for us to help, so we can't do anything for you, and you go to Hogan & Hartson and see what they can do for you.

Mr. BIAGGI. Ms. Snowe?

Ms. SNOWE. I have no questions of the witnesses. I would like to thank the witnesses for sharing their experiences with the committee today. Thank you.

Mr. BIAGGI. Mr. Wyden?

Mr. WYDEN. One very quick question. I think my colleague, Mr. Frank, said it very well about how absurd these regulations are. Let's set aside the regulations, because I think the administration knows they can't kill this program in one fell swoop. There are too many friends on this committee and elsewhere. So they are really trying to kill it by a thousand cuts, one here, one there, by the time they are done, they have been able to kill it.

Say that the program was completely killed, would anybody in the private bar every take something like this on, Mrs. Sansone?

I feel that in a case like this where there is no evidence that there would be a significant monetary reward or a significant sum of money, that nobody in the private bar would take that on.

If there wasn't a legal aid at all, would anybody in the private bar have picked up on this?

Mrs. SANSONE. I don't know about that, but without money—you got to pay, right? You have got to pay when you have these attor-

neys and I didn't have it. My house would have been gone. That is all I have. Nobody else, no money in the bank or anything to help me.

Mr. WYDEN. How about you, Ms. McNeil?

If you didn't have your legal aid office at all, not just these regulations, would any private lawyer in your town have picked up on your case?

Ms. MCNEIL. No, sir; not anyone, and I certainly couldn't afford a lawyer.

Mr. WYDEN. You both were very good witnesses. Thank you.

Thank you, Mr. Chairman.

Mr. BIAGGI. Clearly, there are some pro bono cases that the lawyers handle, but certainly not sufficient to accommodate the deluge that will follow if these proposals are enacted.

I would also like to thank the gentlelady from Maine, Ms. Snowe, for chairing this committee while I was away. But for that cooperation, I am afraid there would have been even a greater delay and I can't apologize sufficiently.

In any event, I am sure we will have enough of a record to sustain our original belief. The gentleman from Florida indicated he had no questions.

Thank you. Thank you very much for your presence and your testimony.

Mr. BIAGGI. Now, we talk to the President of the Legal Services Corporation, Donald P. Bogard.

STATEMENT OF DONALD P. BOGARD, PRESIDENT, LEGAL SERVICES CORPORATION, ACCOMPANIED BY DENNIS DAUGHERTY AND GREGG HARTLEY

Mr. BOGARD. Thank you, Mr. Chairman.

It is a pleasure to be here today. I think I can now appreciate how Mr. Custer may have felt when he woke up and saw all those Indians. We have a problem. I have a prepared testimony which I have presented to you, and with your approval, I would like it placed in the record.

Mr. BIAGGI. Without objection, so ordered. On the basis of your prepared testimony, we have a littany of questions. They tell me you respond briefly, so we will be able to run through most of them, but in the event we don't complete the questions in the interest of time, we would appreciate it if you would follow up, we will give you a list of questions and submit the responses in writing.

Mr. BOGARD. We would be delighted to do that. Our problem is a very real problem that we don't have enough money, and the program has had some problems in the last few years.

Mr. Frank well knows about those problems, and I have had the opportunity to discuss them with him on a couple of occasions. The program is not going to be killed. Congress is not going to allow the program to be killed. The President has not asked me to kill the program.

The President has not asked the Board of Directors to kill the program. Legal Services is going to be functioning on into the

future. Our problem is that we have approximately 46 million people that are eligible for our services.

Now, Congress has seen fit to continue our funding at $241 million for 2 years. You may very well do that again. We have asked for a slight increase. I know the House has talked about $296 million, but the last bill that was talked about on Monday had no funding in it for us.

So we cannot estimate the amount of money that you are going to give us. With that limited amount of funding, we have to do whatever we can to try to serve those people that we feel are the most needy.

It is not our intent by these proposed regulations, and I simply want to reaffirm that they are proposed regulations—it is not our intent by these proposed regulations to deny services to any particular group or to any individual people, but we have to make sure that the limited amount of funding that you give us is put to use in the best possible ways.

Now, there is a provision in the statute which has been apparently not brought to your attention that requires that the Corporation will establish guidelines—the Corporation will establish guidelines for our recipients to use as the basis of eligibility for their services.

Those guidelines have to include the liquid assets of the individual, fixed debts, medical expenses, cost of living, and other factors that relate to the financial inability to afford legal assistance.

It is a requirement of the Corporation to do that. In fact, there have been eligibility guidelines since 1977. These proposed guidelines are quite similar to those. There are differences—I am not going to say that there aren't. There are differences which we put in as a starting point to try to determine what would be the best use of our resources.

By and large, the regulations themselves are very similar to those utilized in the past. Now, I would like to point out, if I may, just a few of the things that these regulations will do.

In addition to what you have talked about as far as the assets test, the proposed regulations would require that group clients be primarily composed of persons individually eligible for free legal services.

They would require that income from welfare programs be considered in determining whether the family income exceeds 125 percent of the ceiling. They would clarify that gross income, rather than net income, is to be considered in determining whether household income exceeds the 125-percent ceiling.

They would continue to permit persons with higher incomes to be served if justified on the basis of medical expenses, fixed debts, or expenses associated with age or physical infirmity.

They would prevent free services to anyone whose income exceeds 150 percent of the local program's income ceiling. Now, we have established that the standard should be 125 percent of the poverty threshold for services.

That means, then, by using a 150-percent ceiling, that up to 187 percent of the poverty threshold could be considered as far as income. For a family of four, that is approximately, I think, $12,375 for the 125 percent.

So, you could add another 50 percent on top of that, and we are talking an income of approximately $18,000. We do establish asset requirements that will have to be met for purposes of free legal services. We would set a limit of $1,500 for a household or $3,000 for a household with a member over age 60.

Excluded from that limit would be asset equity in a residence of up to $15,000, household goods, one burial plot per household member, cash value of life insurance, equity in vehicles not to exceed $4,500, equity in farm land not to exceed $30,000 and equity in work-related equipment not to exceed $10,000.

Now, these are starting points. We are receiving a number of comments. I think the last count I heard, there were in excess of 100 comments. We still have, I believe, 6 days in the comment period.

We expect to receive a substantial amount. We will thoroughly evaluate those comments. We will make adjustments as we think necessary, based on those comments.

We are not cast in stone on any of these regulations, but we feel we have a very strong fiduciary responsibility to make sure the program works. I told Mr. Frank in his subcommittee of Judiciary, Appropriations Committees, and the Senate authorization committee that our purpose here is to make this program as effective and as efficient as possible, and that is all we are trying to do.

Mr. BIAGGI. If I may interject at this point. I understand your responsibility, it is a very serious one, and two, I am pleased by the comment that you are not cast in concrete, and that you are flexible and will respond in realistic fashion to the comments that are being made.

Somehow, it kind of differs from ordinary practice in the comment period, and we appreciate the variance, and hopefully it will be more productive.

Thank you, Mr. Bogard.

Mr. BOGARD. I will be pleased to respond to any questions that the members of the committee might have. If I might, Mr. Chairman, I failed to introduce the people I have with me.

On my left is the Vice President of Operations, Mr. Dennis Daugherty, and on my right, Gregg Hartley, the Director of our Office of Field Services, which is the program area of our corporation.

[The prepared statement of Mr. Bogard follows:]

PREPARED STATEMENT OF DONALD P. BOGARD, PRESIDENT, LEGAL SERVICES CORPORATION

Thank you for inviting me to testify on the proposed changes to the regulations which govern eligibility for Legal Services. I am pleased to have this opportunity to present the views of the Legal Services Corporatiion and I look forward to hearing the suggestions and comments of the members of this Committee and the other witnesses who may be called.

I cannot let this opportunity go by without asking for your help in strengthening the LSC. We have been operating for three years without an authorization bill. For the last two years our budget has been $241 million, 25 percent less than our fiscal year 1981 budget. Monday, the House passed an appropriation bill which contained no funds for LSC. The Continuing Resolution under which we now operate prohibits us from altering the funding level of our grantees. This prevents us from making any correction in the maldistribution of funds which currently exists. Some programs receive less than $5 per poor person while others get over $15. Despite the

enormous changes in the location of the poverty population during the last 13 years, we are required by this year's Continuing Resolution to continue to distribute funds based on the 1970 census. The House Judiciary Committee has included in its reauthorization proposal language that would guarantee that any increase in our appropriation is allocated in direct proportion to present grant levels, meaning the programs which receive $15 per poor person would receive a $3 increase for every $1 in new funds received by a program such as Ocean-Monmouth Legal Services of New Jersey that is now funded at $5.16 per poor person.

I seek your assistance in obtaining House consideration of reauthorization legislation and the removal of restrictions on my ability to reform the funding formula that the Continuing Resolution requires that I follow until the White House and Senate are able to agree upon a Board of Directors. The task of obtaining new legislation will no doubt be more difficult in light of this week's GAO report of widespread violations by former Corporation officials of Congressional restrictions on the use of LSC funds for political activity and grassroots lobbying. We need strong provisions in reauthorization legislation that prevent the diversion of resources from legal representation of individuals to the promotion of political philosophies.

Given the limited funds that Congress has made available to the Corporation to serve poor persons across the nation, we must take steps to insure that those funds are spent on those least able to afford to pay for services of an attorney. Current regulations which were promulgated in 1977 set an income ceiling equal to 125 percent of the official poverty threshold. In 1980, there were 30 million Americans with income below the poverty threshold and another 10 million with income below 125 percent of that poverty line. By 1982, the number had grown to 46.5 million below 125 percent.

Federal law requires the Corporation to set a limit on the maximum income an individual may receive and still qualify for LSC funded legal services. Our enabling legislation also requires the Corporation to establish guidelines to insure that eligibility determinations made by local legal services organizations take into account liquid assets, fixed debts, medical expenses and other factors that relate to financial inability to afford legal assistance.

Regulations implementing that statute make many exceptions to the income ceiling. For example, income from public assistance programs is not counted in determining whether one's income exceeds 125 percent. Organizations may be represented by legal services attorneys regardless of whether their members are poor if the group has as its primary purpose "furtherance of the interests of eligible clients". A few creative legal services attorneys have read our current regulations to permit service to individuals whose net income after taxes falls below 125 percent of the poverty line, while others have read them to permit serving individuals of virtually any income level whatsoever if the individual is elderly or has substantial debts. These interpretations are incorrect, but it is advisable to clarify any ambiguity that some may feel exists in our present regulations. Therefore, we have proposed revisions to our eligibility regulations to insure that every dollar of our appropriations is spent serving people with income below 125 percent of the poverty line, or those very few others who can demonstrate extraordinary circumstances making it more difficult for them to afford legal counsel than lower income persons.

In explaining their purpose, I want to stress that the proposals before you are merely proposals and may undergo revision in light of public comment before being adopted, if, in fact, our Board chooses to adopt new regulations.

The proposed regulations that have been put forward for public comment, which are quite similar to current regulations, would do the following:

Require group clients to be primarily composed of persons individually eligible for free legal services;

Provide that income from welfare programs would be considered along with earned income in determining whether family income exceeds the 125 percent ceiling;

Clarify that gross income rather than net income is to be considered in determining whether houshold income exceeds the 125 percent ceiling;

Continue to permit persons with higher income to be served if justified on the basis of medical expenses, fixed debts or expenses associated with age or physical infirmity, but prevent free services to anyone whose income exceeds 150 percent of the local program's income ceiling. This could be as high as 187.5 percent of the poverty threshold if the local program uses the Corporation's national ceiling of 125 percent of the poverty line.

Set a ceiling on the assets one may have yet still qualify for free legal services. The proposal would set a limit of $1,500 for a household, or $3,000 for a household with a member over 60, excluding:

(1) Equity in a residence up to $15,000 (Equity being defined as the difference between fair market value and encumbrances).
(2) Household goods,
(3) One burial plot per household member,
(4) The cash value of life insurance,
(5) Equity in vehicles, not to exceed $4,500,
(6) Equity in farmland, not to exceed $30,000; and
(7) Equity in work-related equipment, not to exceed $10,000.

The proposal would clarify that the Corporation is authorized to review the income information submitted by a client in qualifying for service if the individual's eligibility was drawn into question.

Under the proposed regulations, a recipient is still permitted to make exceptions to the usual maximum income ceiling of 125 percent of poverty guidelines. However, no exception may be made for any one whose income exceeds 150 percent of the recipient's maximum income guidelines. Thus, no client with more than 187.5 percent of the poverty guideline income can be served under the proposed rule.

All dollars received are counted as income in the proposed rule. In the current rule, section 1611.3(c) which is deleted from the proposed rule, allows benefits received from a governmental income maintance program to be disregarded. Our logic is that a welfare dollar is just as good as an earned dollar as the person receiving it is no more in need than the person earning the same income. In fact, that dollar may be better in that no taxes are deducted from it.

There is a change in allowable group representation in section 1611.5(c). The current rule allows representation of groups if they either are primarily composed of eligible clients or have as their primary purpose furtherance of the interests of the poor and show that they lack resources to retain legal counsel. the proposed rule eliminates this second category and requires groups primarily composed of poor people to show that they lack resources to retain counsel. This change is designed to insure that resources are focused more on individual eligible clients. Groups primarily composed of eligible clients are presumably controlled by such clients, while the other category involves groups that may not be so controlled. In addition, futherance of the interests of the poor is a subjective standard open to variant interpretations. Finally, there is a philosophical difference between providing resources so poor people can have their own lawyer to assert their interests, as defined by them, as clients, and providing resources so a non-poor group can have a lawyer to further its notions of what is in the interest of poor people.

Finally, there is an addition to section 1611.7(c) which sets forth very limited circumstances in which the Corporation may receive financial eligibility information pertaining to a particular client. The client must:
(1) Be already identified;
(2) The information must relate to a challenge to eligibility;
(3) The information must be necessary to confirm or deny that client's eligibility; and
(4) The information must be such as is not protected by the attorney-client privilege.

In no case may such information be released to anyone else by the Corporation nor can it be used for any purpose except determining eligibility. The Corporation cannot fulfill its obligation to the Congress of assuring that legal service appropriations are used solely for those unable to afford legal assistance if it is unable to investigate allegations that a LSC-funded attorney is representing a person of high income or substantial resources.

The proposal which has drawn the most criticism relates to the definition of maximum allowable assets. We knew it would be difficult to arrive at a consensus as to how many assets a person could have and still be poor enough to need publicly financial legal services. At the same time it was clear that some people with low income but substantial assets were better able to afford lawyers than some other people with no assets and income several hundred dollars over the official poverty threshhold.

We do share the concerns that you may hear expressed today by others about the economic hardship that unexpected medical expenses, for example, may cause an elderly person on fixed income. You will note our proposed Section 1611.5(b)(1)(ii) would expressly allow our recipients to serve clients over the maximum income level on the basis of "expenses associated with age or physical infirmity of resident family members". This obviously is a counterbalancing factor that the recipient should also consider before denying service to anyone on the basis of assets. Legal Services is designed to represent poor people. Other programs such as the legal as-

sistance provided to the elderly through Title III do not have a means test and are unaffected by these regulations

The stated purpose in the proposed regulations is identical to that in the current regulations:

"• • • to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance • • •"

These proposed regulations attempt to achieve that purpose, but the comment period will allow the Corporation to evaluate suggestions for improvement and to present a refind set of regulations to the Board with a complete analysis of the comments received. The Board will then make an informed decision designed to assure access to the judicial system for our most needy citizens.

Mr. BIAGGI. Thank you very much, gentlemen.

With respect to the new assets test in your regulation, maximum allowable assets of $1,500 for all members of an applicant's household, except where the household has two or more, at least one of whom is 60 or less, a maximum asset of $6,000.

How did you arrive at these figures, and did you perform any studies that led you to arrive at those limitations?

Mr. BOGARD. We discussed those for a great period of time among staff. We have also taken quick studies from our recipients to see how they themselves react, if they established any guidelines. It is a matter that has been subject to consideration for some time.

For example, I have a memorandum that one of the people in the Corporation wrote to Gerry Singen in December of 1980. Mr. Singsen was Vice President of the Legal Services Corporation.

In 1980, he says that:

Eligibility criteria employed by the programs limit assets so severely that anyone with virtually any land, machinery or livestock, no matter how heavily encumbered, is ineligible.

Programs seem to count equity and such assets toward the general asset limitation of the program. It is very easy for a farmer to be mortgaged to the hilt, have a low income and still retain $2,500 in equity, thus rendering him ineligible in many programs.

So we tried to go beyond something like that. As I said, we were trying to get a starting point. We had a lot of internal discussion about those requirements, and we attempted to borrow very heavily upon the food stamp regulations which establish some of these figures that you see in the proposed regulations.

Mr. BIAGGI. You made a statement—the opening comments in your statement, about Congress not providing enough money, and I agree with you on that score, but let me ask you, have you made a budget request for additional money.

And what has been the response?

Mr. BOGARD. We requested an increase of 6.7 percent this year, which would have taken us from $241 million to $257 million. That was the recommendation of my predecessor, Clint Ryons to the Board of Directors in November of last year, and the Board adopted that recommendation and instructed me to do that, so I have asked for $257 million.

That is what we presented in January to the Congress.

Mr. BIAGGI. What kind of reaction have you received?

Mr. BOGARD. Well, the Senate has taken that figure and the House wanted to give us more money than that. I told both groups that I would spend anything in addition to that they wanted to give me.

Mr. BIAGGI. How about OMB?

Mr. BOGARD. We don't go directly to OMB. We submit our budget to Congress directly.

Mr. BIAGGI. That sounds a little more promising.

Mr. BOGARD. Perhaps it is, yes, sir.

Mr. BIAGGI. How do you compare these limitations with those of public benefit programs such as SSI and food stamps?

Mr. BOGARD. They are more strict in some ways and quite similar to food stamps in others.

Mr. BIAGGI. Why would you make them more strict? What is the justification for that?

Mr. BOGARD. I think the justification is simply that we have so many people to serve and so little money to do it. There are so many people out there that don't have anything that need our services. If we concentrate on those folks even though some other folks may not get served, we are still doing what we have to do.

I don't think that these proposed regulations would reduce the number of people that we are going to serve by one person.

Mr. BIAGGI. Really?

Mr. BOGARD. Really. We closed 1,141,000 cases last year in our program with 5,000 lawyers, and I don't think there is anyone that thinks we are meeting more than 50 percent of the need.

We are going to have 1.2 million people coming through those doors regardless of what restrictions we put on. I don't mean to sound callous about it.

There is so much need out there that we are going to be able to keep handling clients and handling clients.

Mr. BIAGGI. I agree. We know the need, but how do you reconcile a virtually stable income appropriations for your operation with a burgeoning population that needs to be served, and tell me that no matter what happens, there won't be a reduction?

Mr. BOGARD. I think the main point to consider there is that there has been no definitive study anywhere in the history of this corporation as to what the need is. When I got here 9 months ago, that was one of the first things I tried to find out, how much need is out there, how much are we accomplishing, and people said, "I don't know."

It may be 20 percent, it may be 50 percent. So one of the things we are trying to do is to come up with foundation funding which will enable us to do a very thorough scientific study to show what the need is, so that when I come back here before the Congress next year with my budget request, I can tell you why I need that amount of money.

Right now, we can ask for $257 million or $241 or $296 and we can't justify any of those three amounts based upon any information we have in front of us.

Mr. BIAGGI. I am afraid I am going to have to go. Congressman Frank will be here shortly. We will have a temporary recess until he gets here.

[Recess.]

Mr. BIAGGI. The hearing is called to order.

Mr. BOGARD. Mr. Chairman, if I may, we took a few minutes to look at some figures while you were out. The asset test for food stamps is $1,500, and $3,000 for elderly. For SSI it is $1,500 and

$2,250 for two people. That is including the cash value of life insurance over $1,500. And for AFDC the asset figure is a thousand dollars, and they disallow anything in excess of $1,500 on an automobile as opposed to our $4,500 and $2,500 on the asset test.

Mr. BIAGGI. What about this $15,000 difference with relation to the—not the difference, but the Congress determined the applicant's home will be totally excluded when determining SSI and food stamps, and according to your proposal only $15,000 of the home equity will be excluded.

Mr. BOGARD. That was simply put in to start the discussion. There was no——

Mr. BIAGGI. I understand, we are going to have a long discussion, that is all.

Mr. BOGARD. That is right. As I have indicated we are perfectly willing to consider all of these comments. We felt that we have to do something to make sure that we serve the neediest of the needy and if we can do that, then that is what we should be doing.

Mr. BIAGGI. Do you know how many SSI individuals would be ineligible for these services under the new regulation?

Mr. BOGARD. I do not. We could attempt to find out, but I do not know.

Mr. BIAGGI. You said there would be no reduction of services, and that flies in the fact of reality. You have a limited amount of money, I think you said 47 million people would be eligible, and you are only dealing with about 50 percent of them, and with the increased costs there would be less money to go around, there would have to be some reduction, would there not? What you are telling me, telling this committee is that because of appropriations limitations you are confronted with a real problem and these proposals are being put in place so that in the end you will be able to serve the most needy, is that what you said?

Mr. BOGARD. That is correct. With 5,000 lawyers, those lawyers can only serve so many clients. Now they may be able to serve 100 clients a year or 200 or 250, but they can only serve so many and expanding the number of eligible people is not going to increase the number of people they can serve, and there are so many out there that when you put people on top of people and you expand the outer limits that is not going to do anything to increase the service for those numbers of attorneys that are out there.

Mr. BIAGGI. I note that a person that has a vehicle with an equity value of $4,500 would be ineligible. Are there any exceptions to that rule?

Mr. BOGARD. Well, there is the $1,500 initial cap, so there would be $1,500 plus equity in excess of $4,500.

Mr. BIAGGI. Well, the reason I am asking is that you have some individuals with low income and they own their own vehicles which operate as taxis. Would these individuals lose their eligibility? Some taxi drivers make a lot of money, but there are others that do not make very much at all.

Mr. BOGARD. If that were the situation, that could very well be in work-related equipment. We give a $10,000 exemption for work-related equipment used in the production of income, so I would think that would fall within that category.

Mr. BIAGGI. The proposed regulation will also count as assets ordinary Keogh plans and IRA's. Why do you contradict the Federal policy of encouraging people with tax benefits to invest in these things for retirement income?

Mr. BOGARD. We felt we just had to establish a line somewhere and certain things have to be excluded.

Mr. BIAGGI. What I get from your original statements and your responses to these questions is that you are confronted with a serious financial problem.

Mr. BOGARD. That is right.

Mr. BIAGGI. Unless Congress responds with more appropriation, you are simply going to have to find ways to function. In the end, you have to be, by adopting some of these proposals, you will be required to deny service to some people. That is an inevitable conclusion.

Mr. BOGARD. Some individuals will be denied service; that is correct.

Mr. BIAGGI. But not the most needy, is that what you are saying?

Mr. BOGARD. That is correct, and I just do not believe that the number of people that we service will be decreased at all by adoption of regulations like these.

Mr. BIAGGI. That is what puzzles me. How can you say that?

Mr. BOGARD. Again there are only so many people that our programs lawyers can serve and there is only so much need that they can cover.

Mr. BIAGGI. You need more money for more lawyers to deal with more people.

Mr. FRANK. For the record, could Mr. Bogard not nod but enter that one orally?

Mr. BOGARD. That is correct, Mr. Frank.

Mr. FRANK. I understand that and I want to say I appreciate, given the entire context what I have heard before and now, what seems to be a very strong argument for the $296 million you are seeking. I think it is clear from your testimony that if we do not pass that, there would be a lot of elderly people and others victimized. I understand that we will probably do the same number of people, although in some cases, the eligibility requirements being as complicated as they are, and the additional paperwork and the additional involvement of lawyers in eligibility, will probably take away from their time in which they could service clients. But beyond that, we have a class of people who are poor. It is conceivable that we could take as our selection for cases the criterion of absolute poverty and everybody applied and they filled out their form and whoever were poorest, we took them.

I do not think any of us would think that was a sensible way for legal services to behave, because a relatively trivial offense to a person with $10 then takes precedence over a very serious offense to an individual or group of individuals with $30 or $40. That is what I think we have here. If we were talking about wealthy individuals, I agree they should not be included. But when you talk about someone who has for example $15,000 equity in a home, I believe there is a vast number of older Americans, in particular, but some others in America who most of us would consider poor, who live like poor people, who would in fact be hurt by that. I do not

think it makes sense to say that because you have an equity in a home of $20,000 or $30,000, because you have an equity in a home of $20,000 or $30,000 we are not going to deal with this very terrible wrong that has been inflicted by you.

Instead we are going to go to the person living in public housing who has a much more minor dispute, and I think that is a mistake. So that even within this argument—I have three points, one, we do not disagree, obviously, if there is not enough money people will get hurt. But two, the increased paperwork will, I think, mean less people to the extent that they have to do more checking of eligibility and pass that on to Legal Services Corporation; that takes time away from practice. But beyond that, as within a class of people who are poor, does it make sense to say that absolute poverty to the exclusion of the merits of the case and the gravity of the wrong will be the selection process, and I think that is the actual issue that these things raise.

Mr. BOGARD. I think the local programs have to consider other factors like that, and that is included within the guidelines.

Mr. FRANK. In other words, you are saying that given the tough cases—I take it you would agree that someone who had after a lifetime of work $20,000 or $30,000 of equity in a home and who lives on the minimum $450 a month in social security—I think that is poor. I think that person would live poor, particularly, by the way, if the individual is in an area, as he or she is likely to be, where he or she could not get into public housing if she wanted to. There is a long waiting list, et cetera. I think, to say to them, we exclude you regardless of the merits of your case is wrong. I think we ought to say yes, we cannot service everybody, but within the group of people who are poor, we will pick cases based on the merits, i.e. the gravity of the impact; the likelihood of success, whatever would be logical criteria, and I think you impinge on their ability to do that by an excessively restrictive description of who is no longer poor, certainly with $15,000 equity.

Mr. BOGARD. That is very possible. I am not sure that I accept that, but that is very possible.

Mr. FRANK. I will settle for not sure.

I will yield back, Mr. Chairman.

Mr. BIAGGI. Ms. Snowe.

Ms. SNOWE. Thank you, Mr. Chairman. I too have concerns, obviously, about the proposed changes in the regulations. I think we are trying to draw a line between the neediest and the neediest. I just wonder when the Board made these proposed regulations, did you analyze the implications on the number of people in this country that would be affected by these changes? For example, the Legal Services Corporation does serve the poor where there are many that were denied in the neediest category because there were not sufficient funds provided for Legal Services Corporation.

Mr. BOGARD. Could you repeat that, please?

Ms. SNOWE. You are drawing a line between the neediest and the neediest, and that is why you are proposing these regulations, to insure that the neediest in this country have the ability to obtain legal services. So, therefore, I am asking that if you are trying to insure that the neediest in this country get legal services, have you

ascertained how many were denied legal services last year because there were not sufficient funds in the budget?

Mr. BOGARD. That information does not exist. If it does exist it would be with the local programs. We have tried to get such figures from them and have been unable to do so. They do not maintain records in that fashion. Let me correct something that you indicated before and on which I do not want you to have a misconception. These proposed regulations are staff-proposed regulations. They have been presented to a committee of the Board simply for discussion purposes. They have not been before the Board nor did the Board itself implement them.

Ms. SNOWE. That is an interesting point.

Mr. BOGARD. They will go before the Board in October.

Ms. SNOWE. Is that the usual procedure of the Board in the way they propose changes?

Mr. BOGARD. The Board will suggest that we look at something, staff members may suggest something if we have a problem as far as compliance or something like that and we look at various areas.

Ms. SNOWE. Would it not have been more appropriate for the staff to propose the changes to the Board members, discuss those changes and what they implied, and then decide whether or not you propose them in the form of regulations so that we did not have this enormous upheaval and concern and apprehension about these changes?

Mr. BOGARD. The proposed regulations were before a committee of the Board.

Ms. SNOWE. Who is the committee?

Mr. BOGARD. The Operations and Regulation Committee, a three-member committee. They were there twice. The first time they were discussed there were a number of comments from the audience. They were sent back to staff for reevaluation, some changes were made, they went again before the committee and the committee ordered us to propose them in the Federal Register, publish them for comment, and that is the stage at which we are now. So comments will come in, be analyzed changes made, and then be sent back to the Board for either adoption, dismissal, sending them back, redrafting.

Ms. SNOWE. So this committee is comprised of board members?

Mr. BOGARD. That is correct.

Ms. SNOWE. So there were three of the four board members none of which have been confirmed; am I correct?

Mr. BOGARD. That is correct.

Ms. SNOWE. And they approved these regulations?

Mr. BOGARD. For comment.

Ms. SNOWE. For comment?

Mr. BOGARD. For comments.

Ms. SNOWE. What did the committee feel about these changes? They must have approved them in order to allow them to be proposed for a comment period?

Mr. BOGARD. They published them. They didn't give any particular comments into the record as to whether they favored the provision or did not. They listened to a number of comments from people at the public hearings, and simply——

Ms. SNOWE. Where were these public hearings held?

Mr. BOGARD. There was one in Phoenix in July, I believe, and a second one here in Washington last month, at the end of August, I believe.

Ms. SNOWE. And what was the feeling of those who testified or who commented on the proposed changes?

Mr. BOGARD. Much the same as what we are hearing here today, that we are being overly restrictive. There were a number of people who didn't understand the provisions because they hadn't had time to analyze them and they were confused about some of the provisions.

Ms. SNOWE. I guess what I am trying to ascertain is, given the nature of these regulations, I gather this committee did not really determine the effect it would have on a number of people in this country. I understand you said earlier how many millions received services under the Legal Services.

Mr. BOGARD. We closed 1,141,000 cases last year. There are 46.5 million people below the 125 percent of the poverty threshold which are theoretical clients of Legal Services, potential clients.

Ms. SNOWE. And of those clients that you served last year, how many would be affected by these proposed changes?

Mr. BOGARD. Well, 14 percent of our cases involve people over the age of 60.

Ms. SNOWE. And at what income level?

Mr. BOGARD. They involve levels established and published back in 1977, which would be the figure of $12,375 for a family of four.

Ms. SNOWE. Now we are adding these additional restrictions by including non-liquid assets, including home equity assets with the limit being no more than $15,000.

Mr. BOGARD. That is correct. The programs were supposed to have guidelines for considering assets. We found, however, that most of those we surveyed in the last week or so did not have such guidelines.

Ms. SNOWE. Finally, Chairman Biaggi was discussing some of the other programs and their assets test—and maybe I am correct in saying this; correct me if I am wrong—that all other tests do not include a home. All other programs do not include a home as part of the needs test, such as SSI?

Mr. BOGARD. I believe that is correct.

Ms. SNOWE. Medicaid, food stamps. So this would be an unusual—or this would be a deviation from the standard means test as far as a home is concerned?

Mr. BOGARD. It is different. I don't know if it is a deviation.

Ms. SNOWE. It appears obvious that it is, looking at all other income maintenance programs and services for low-income people.

I am just trying to get to the bottom as to the reason for these changes, these unusual changes, and to what extent they will impact on low-income individuals in this country and particularly the elderly.

Mr. BOGARD. It is very straightforward what we are doing. We have just a limited amount of money and we have got to serve those people.

Ms. SNOWE. I am not convinced. That may be true, but I don't think that you have provided sufficient information to this committee that would substantiate the changes that you are proposing,

and I guess that is my concern. If you came forth with information in terms or the implications that would be one thing, what you are actually doing is drawing a line between the needy and the needy, and therefore I do have concerns with respect to that.

Mr. BOGARD. If you would like to give us any guidelines, we would be glad to consider them.

Ms. SNOWE. We definitely will, I can assure you. So I gather that after the proposed comment period that it ends on September 28, the Board meets on the 4th of October to discuss the comments that have been submitted?

Mr. BOGARD. That is correct.

Ms. SNOWE. So you will be open to changes to those guidelines?

Mr. BOGARD. That is correct.

Ms. SNOWE. Thank you very much.

Mr. FRANK. Mr. Wyden.

Mr. WYDEN. Thank you, Mr. Chairman.

Mr. Bogard, I am particularly concerned about the eligibility changes that would deny funds to groups which represent eligible persons which aren't composed of eligible persons themselves. It seems to me this regulation clearly discriminates against nursing home patients. They are very often too frail to take care of themselves as far as legal matters.

As a result, concerned citizens, children of these patients, will form groups to protect the interests of the elderly patients. Under the current regulations, these groups do have access to Legal Services funds based on the eligibility of the poor elderly patient. Under the changes, there would no more be these kinds of services to nursing home patients.

Now, you have said you want to protect the truly needy, and that is what the safety net was all about. How are you going to protect nursing home patients under this proposal which would very clearly deny them access to justice, access to the program?

Mr. BOGARD. The change that we made relating to groups was elimination of the provision in the current regulations which provides that groups whose purpose is to further the interests of eligible clients may be represented. That has been eliminated, but groups primarily composed of eligible clients can still be represented. That is not precluded by these regulations. The only thing that has been denied was simply representation of groups which are formed for the purpose of furthering the interest. There may not be eligible clients within that group, but there would be eligible clients within groups composed of eligible clients.

Mr. WYDEN. But, sir, all over this country, friends and relatives of nursing home patients, seeing that it is difficult for the patients to secure their rights on their own, are forming these groups for the very express purpose, it seems to me, which you have said they ought to be denied. They are going out expressly to set up organizations to represent the patients, and I just find it shocking, even after all we have watched with this administration's proposals on the area of legal services, that now we are actually going to tell the patients, the nursing home patients, that the door to the courthouse is closed.

Mr. BOGARD. Couldn't they be members of that group, Mr. Wyden?

Mr. WYDEN. It is possible, but the fact is that there may be others involved; I gather, under your proposal and your answers here today it would mean that they couldn't get any services.

Mr. BOGARD. Couldn't they be served individually, Mr. Wyden?

Mr. WYDEN. It is possible that they could, but around the country what we are seeing—and this has been part of senior advocacy through various kinds of organizations—they are getting together with friends and relatives simply because they haven't been able to secure their rights as individuals. What you are doing ignores the fact that they haven't been able to get adequate representation in the past.

Mr. BOGARD. Well, I think that our regulations as proposed will have more of an impact on getting direct delivery of legal services to those individuals, than simply allowing groups to be represented which have a vague purpose of furthering the interest without having control by those individuals, and, I am hopeful, that that is what we can do with these regulations.

When those comments are presented, and we will present your comments to the board, they may very well feel that your position is correct.

Mr. WYDEN. I am sorry to see that you are calling the purposes of these organizations, that are set up expressly to represent the rights of patients, vague. Because there is nothing vague about them at all. I can assure you, having worked with those groups, what they have found is that group efforts in this area, where patients are frail, work a lot better than individual cases.

I would just like to ask you whether you can name a specific case, even just one, in which a group represented by a Legal Services program did not try to further the interests of the clients.

Mr. BOGARD. I believe there was an organization in Hawaii that was composed of several people including doctors that had some eligible clients, and the doctors had retained private counsel, and Legal Services lawyers were brought in to represent the group, even though counsel was being provided individually by doctors.

Mr. WYDEN. We have found one case, and I am pleased to hear we found one case. Did you examine the cases in which a group client did further the interests of eligible clients? Did you even look, because I am glad you have been able to find one case where there was an abuse, and I am concerned about that too. But I know of many, many cases where the group client did further the interests of eligible clients. Do you have any idea how many cases there were like that?

Mr. BOGARD. No, sir, I don't. I don't know how many such groups like that are being served by Legal Services lawyers. It could be just the one that was brought to us by a Member of Congress, the Hawaiian incident. There could be more, but we don't have any records that would indicate that.

Mr. WYDEN. Given the fact, then, that we need to balance all the factors in these kinds of cases, you have cited one abuse, and there have been all over this country many instances of very successful group representation, why didn't you look at the second category? You looked at the abuses. It just seems to me that we are only looking at one side of the scale, and that is my job, and that is your job, to always balance what we are getting for our money against

what we are not getting, contributions against abuses. Why didn't you look in the area of successsful group representation?

Mr. BOGARD. We felt that there were a lot of people within those proposed groups that either could afford their own counsel or could be served as individuals or could be members of a group and be eligible that way. We have simply to draw a line somewhere, and adding people on the upper limit of those that we are potentially able to serve does not necessarily create additional service to one individual in this country.

Mr. WYDEN. But what you have done to group representation is that you went in there with a cleaver—now you probably could have, and you would have gotten support of people like Barney Frank and myself—gone in there with a scalpel and dealt with the problem of the doctors who ripped off the program, and you and I and Mr. Frank and Ms. Snowe and I and others would go in there together.

But, instead, you went in there with a cleaver, and most of the groups around this country that are just getting organized, representing the rights of patients, aren't going to be able to get group representation. I just think that is a shame, and I think after so many months of debate, I think it really means we moved to a new low, that we are not going to let groups of nursing home patients get into court.

Mr. BOGARD. May I just make one comment?

Mr. WYDEN. Please.

Mr. BOGARD. These are proposed. They are not in effect. We have not wiped out one group, so I would take issue with your fact, saying as of now, that is the way it is going to be.

Mr. WYDEN. The best thing you have said today is that these are just proposals.

Mr. BIAGGI. He said it three or four times.

Mr. WYDEN. He did, indeed.

One last point, Mr. Chairman. We talked about the private bar, and the fact is that the private bar in this country and in my own State has done a spectacular job in terms of serving low-income senior citizens, and I have seen it in my own State.

The problem is that the private bar is not trained to handle cases like medicare law and social security law. It is not taught in law schools. That is why the gap between supply and demand is getting greater and greater, and I think that we ought to take our hat off to the private bar, because they have made tremendous contributions, at the same time recognizing that because of their training and the unique nature of these legal problems, the gap between the demand for legal services for low-income seniors and the supply is still getting greater and greater.

I thank the chairman's indulgence.

Mr. BIAGGI. Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Mr. Bogard, I quote from the second paragraph of your testimony: "I cannot let this opportunity go by without asking for your help in strengthening the Legal Services Corporation."

I gather, then, that you are favorably disposed toward continuance of Legal Services Corporation?

Mr. BOGARD. That is correct.

Mr. BILIRAKIS. You also testified earlier in your remarks that you felt the administration was favorable toward continuation of Legal Services Corporation?

Mr. BOGARD. I testified that I had not been instructed to do anything to destroy it. I think you are correct, and I think it would be very possible in the next few months to get support by the administration for the continuation, and, in fact we have been talking to people in the White House about the possibility of supporting a 3-year authorizaton for the program.

Mr. BILIRAKIS. Are we faced with the prospect the administration might be favorable to continuing Legal Services Corporation as it now exists, so to speak, although with various changes, or the possibility of taking these funds and, in the form of block grants, spreading them amongst the particular States and locales, so they can form their own separate Legal Services Corporation?

Mr. BOGARD. That has been a proposal that has been considered by the administration, I believe, in times past. However, I don't think there is any mechanism that is currently in place that can replace what we do. There may be down the road, but there is nothing there now, and I believe that it is possible for the administration to support a reauthorization for a 3-year period, with necessary reforms of the corporation for some of the past abuses which have been chronic in the past.

Mr. BILIRAKIS. Do you in your opinion, sir, support the concept of taking these funds and spreading them out in the form of block grants to allow the local areas to handle their own legal services based on their particular needs as they see them? Do you feel that that concept might work?

Mr. BOGARD. I have to tell you that I haven't given it that much thought. I think it is a possibility. It certainly has been discussed by a number of people, but in my 9 months here, I haven't been looking for a new way to fund this program. I have just been looking for a way to make it more efficient than it is now, and trying to create more sources of funding that can come in to us so that we can increase our delivery of services. I haven't been looking for replacement mechanisms.

Mr. BILIRAKIS. Mr. Bogard, to hitchhike on a question asked by my colleague, Congresswoman Snowe, you testified that you are planning to present a review of the comments to your board at the October 4 meeting, right?

Mr. BOGARD. That is correct.

Mr. BILIRAKIS. Do you anticipate making a recommendation on this regulation to the board at this meeting, or are you planning to wait until a later time?

Mr. BOGARD. I anticipate we will make a recommendation. It certainly depends on what the comments are as to what the particular recommendations will be, but it is our intent to make a recommendation to the board.

Mr. BILIRAKIS. Is it fair to hit these people so quickly after they have been appointed to the board? What is it, a matter of a week?

Mr. BOGARD. Well, these folks have been on for some time. The four members that we have on the Board of Directors have been sitting since January, and so they have had a significant amount of time to review the operation of the Corporation and to see what is

going on. Now, they have not had these regulations before them for that period of time. They came out initially in July, I believe, and they will have only had the comments for a week or so. I am sure if they feel that it is not fair, they will tell me.

Mr. BILIRAKIS. Thank you. Our concern on this committee is specifically with the problems of the aged, the elderly, I understand our good chairman, back in 1977, was responsible for an amendment which would have placed priority on the needs of the elderly as far as the work of Legal Services Corporation is concerned. I like to think that if it were to operate as he intended it, it might solve the problem.

I am wondering if you must have a means test type of regulations. Frankly, I think that these particular tests are somewhat onerous, for anybody, aged or otherwise. But I am certainly not an enemy of means test. It seems to me a very justifiable type of thing as long as it works well.

I just wonder, though, if we should have a means test as far as the elderly are concerned. We are talking about a segment of the community which is very security conscious. I represent a part of Florida in which, I said earlier, about 50 percent of the population are elderly. I think I understand those people there.

I might add, I was a volunteer chairman of a legal services board, or committee if you will, as a member of my local bar, long before Legal Services Corporation came into being or was even being talked about. And I question whether we should have means test for the elderly. So is it conceivable that if we must have a means test, you might have a means test apply to one segment of the population and not apply to the elderly?

Mr. BOGARD. It is conceivable. Some of the programs that we just gave figures on earlier had a doubling of the asset test for elderly. That might be something to consider, and so I think that is a possibility. We do have, as I am sure you know since you were involved in the legal aid program, we do, however, have title III moneys available to our programs, and there is about, I believe there is $8 million-plus which would go to the programs, which of course would not be restricted in any way as far as access and delivery of services.

Mr. BILIRAKIS. We didn't have any Federal money coming into our program, sir. We did it all without it, back in those days.

All right, Mr. Bogard, I think we all can go on and on, because you are certainly a very big key as far as I am concerned. I am very impressed with your testimony. Thank you.

Mr. BOGARD. Thank you, sir.

Mr. BIAGGI. I want to thank you, Mr. Bogard, and your associates, for your testimony, but more importantly, we talked about the process. Many people have said that input will be meaningful. We have become rather cynical about that. Somehow I get the impression that you are telling it straight. Don't destroy my perception. It will be traumatizing, really. It will be terribly unfortunate for those who testify after you and make the same representation.

I understand your problem. I realize what you are trying to do, and you can be assured that we in the Congress are sympathetic and will do the best we can. I think it is critical that you pursue your own budget requests with vigor. By working together, perhaps

we can improve your financial position, and I know that you are going to take very seriously the comments and observations made by my colleagues. Let's hope that your new proposals will not be as negative as we believe they were.

Mr. BOGARD. Mr. Chairman, I may tell you that our board of directors is very committed to this program, and I am sure that they are going to give a lot of consideration to these comments, and they won't take any action that is arbitrary or without a considerable amount of thought and discussion, and I am sure that they look forward to receiving your comments, and we will make sure that they are aware of all those things that have been brought up by the committee.

Mr. BIAGGI. Thank you, gentlemen.

Mr. BOGARD. Thank you.

Mr. BIAGGI. A panel of three, Mr. Lyman Tondel, chairperson, Commission on Legal Problems of the Elderly of the American Bar Association; John David Kennedy, executive director of Pine Tree Legal Services of Portland, Maine; and from the great Empire State of New York, from which I originate, we have the new director of the State office of the aging, Mr. Eugene Callender, an old friend.

Gentlemen, your statements have been read and we understand they are quite comprehensive and I doubt there will be any questions. But whatever comments you are to make we will be anxious to hear. Your full statements will be included in the record. Very frankly, what we are concerned about is the time constraints. I think Ms. Snowe at the outset stated those time constraints. We will be evicted from this room at 5 o'clock. With that caveat, Mr. Tondel.

PANEL 2: SOURCES OF LEGAL SERVICES FOR SENIORS, CONSISTING OF LYMAN M. TONDEL, CHAIRPERSON, COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY, AMERICAN BAR ASSOCIATION; JOHN DAVID KENNEDY, EXECUTIVE DIRECTOR, PINE TREE LEGAL SERVICES, PORTLAND, MAINE; AND EUGENE CALLENDER, DIRECTOR, NEW YORK STATE OFFICE FOR THE AGING

STATEMENT OF LYMAN M. TONDEL

Mr. TONDEL. Mr. Chairman and members of the committee, we appreciate very much what you are doing and the opportunity to be here. I am a practicing attorney in New York City, and am chairman of the American Bar Association Commission on the Legal Problems of the Elderly. I am here at the request of Wallace Riley, who is the president of the American Bar Association, to present its views.

I might say that, in addition to the work that the commission has done with its excellent staff and members of the commission in connection with these regulations and on a continuing basis for the last 3 years, the American Bar Association Standing Committee on Legal Aid and Indigent Defendants has coordinated the law-related needs of the poor within the American Bar Association.

I want to say that the American Bar Association has been a strong supporter of the Legal Services Corporation, as you know,

since its inception, believing it to be an effective and efficient means of addressing the legal needs of the Nation's poor, and helping provide justice for all.

With the limited resources available, the local recipient programs have, we believe, done, on the whole, a remarkable job of providing quality legal representation to those who cannot afford legal services. There are spots and blemishes in this program as there are in every program. We would like to see those eliminated, but the program as a whole and most of what they have done we think is worthy of strenuous support, which is one reason I am here.

The issue of client eligibility is a crucial one. I have filed our statement and I will try not to repeat what has been said already so well by so many people. I do want to make a few points, though. Particularly our opposition to the proposed new eligibility rule, which for the first time would take the nonliquid assets of an applicant into account in determining eligibility. I don't understand it. As a lawyer, as I read the statute, it says, the guidelines shall reflect certain factors which "include the liquid assets and income level of the client." I don't really see where the Legal Services Corporation has the power to add nonliquid assets. That is deliberate language and carefully chosen language.

Up to this point the regulations, at least until October 6 the regulations follow the statute. Now, the proposed regulation would impose a limit on assets, which we have been talking about, on nonliquid as well as liquid, for an applicant's entire household. Without going into all the ramifications of that, I am sure you all understand the point, that this involves not only the question of whether the applicant meets the test, but it also is going to involve an awful lot of excess accounting and paperwork and analysis of every applicant who comes along.

This is just the first of several instances I am going to mention of the extent to which this violates the paperwork regulation or statute, and all the effort to simplify government. It is going to be very complicated in its implementation.

In connection with the limit, with the inclusion of anything over $15,000 in equity, nonliquid, in the case of homes, and $30,000 in the case of farms, where the same problems exist, and $10,000 in the case of work-related equipment—you have heard a good bit of testimony already, and at least one witness did point rather specifically to the situation, by analogy at least, of people who bought their homes in the forties or fifties, 1940's or 1950's, when they were 30 or 40 years old, for prices as low as $5,000 to $15,000, and now they find themselves with homes having a fair market value of anywhere from $25,000 to $50,000 or $60,000 or even more.

Meanwhile real estate taxes, insurance premiums, and fuel costs have risen inexorably. Maintenance and repair costs have mounted, especially as the homes got older. Where the householders have had their earnings slashed by unemployment, disability, or old age, we are talking about all of those categories, they have barely been able to hang on to their homes, living frequently on Government allotments, but they have hung on.

The same is true of small farmers in the case of their farms, and small businessmen in the case of their work-related equipment.

This is the point I want to make in connection with this, which is a little different from what anybody else has said so far. These are the very sorts of people who, amidst hardship, provide the backbone of America. These are the self-reliant, hard workers who hung on grimly to their homes or farms or businesses. Because of the very fact that they have acquired and kept homes or farms or small businesses, they may have occasional need for a wider variety of legal services than other poor people.

How ironic, and how contrary to our concepts of free enterprise, that the Legal Services Corporation should propose to bar legal services to these people for the very reason that they have clung to their homes and farms and small businesses.

It may be confidently but sadly predicted that countless such people who might otherwise continue their independent way of life may lose their homes for want of legal representation, and in many cases end up in institutions financed with medicaid public funds.

Mr. Bogard several times mentioned that there was a problem of serving the neediest of the needy. If these aren't the neediest of the needy, they are at least the most deserving of the deserving.

Just two or three quick other points. I talked about the amount of paperwork and administration necessary in connection with this. The proposed rule would eliminate the provision in the existing regulation which permits funded programs to represent clients who are already receiving benefits from a governmental income maintenance program. The reason obviously is, they have already gone through a means test. They have already been cleared as people who are deserving of help from the Government. Now they have them go through it again, and this would be another eligibility review resulting in costly duplication and bureaucratic waste.

Another aspect of that same thing is this business regarding groups. Mr. Bogard seemed to think that you could represent each person in a group individually, and resolve the problem. Think of the enormous amount of bureaucratic waste and paperwork involved in going through assets of every member of the group.

One final thing. I am trying not to take even 5 minutes.

As a former chairman of the American Bar Association Ethics Committee, which writes opinions regularly, as you all know, I am absolutely shocked at the proposal that client identifiable eligibility information be made available to the Legal Services Corporation. I will leave it at that.

Thank you very, very much for your time. I hope that Congresswoman Snowe's suggestions regarding procedure after this hearing is over will be carried out. I think it was you who suggested that comments be filed, certainly by those of us who appear, and then that the Legal Services Corporation realize that you can't make a purse out of a sow's ear and withdraw the proposal because there is no way you can make a purse out of this ear. I think if that doesn't work, I like the idea of utilizing the continuing resolution procedure.

Thank you all very, very much.

Mr. BIAGGI. Thank you very much.

[The prepared statement of Mr. Tondel follows:]

PREPARED STATEMENT OF LYMAN M. TONDEL, JR., ON BEHALF OF THE AMERICAN BAR ASSOCIATION, WASHINGTON, D.C.

Mr. Chairman and Members of the Subcommittee, I am Lyman M. Tondel, Jr., a practicing attorney from New York. I appear before you today at the request of Wallace D. Riley, the President of the American Bar Association, to present the Association's views with respect to the Legal Services Corporation's proposed revision of its regulations governing client eligibility for legal services (45 Fed. Reg. 39086 et seq.).

I am the Chairman of the American Bar Association's Commission on Legal Problems of the Elderly; my testimony today will be based upon not only the work of that Commission but also the examination of the proposed regulations made by the ABA's Standing Committee on Legal Aid and Indigent Defendants. The Commission on Legal Problems of the Elderly is an interdisciplinary commission created in 1978 by the ABA Board of Governors to analyze and respond to law-related needs of older Americans. The Standing Committee on Legal Aid and Indigent Defendants is the focal point within the Association for monitoring delivery of civil and criminal legal services to the poor.

The American Bar Association has been a strong supporter of the Legal Services Corporation since its inception, believing it to be an effective and efficient means of addressing the legal needs of the nation's poor. With the limited resources available to it, the Corporation and its local recipient programs have done a remarkable job of providing quality legal representation to those who cannot afford such services. The need is great and the resources are limited. The issue of client eligibility is, therefore, a crucial one to the program's success.

We believe there are several factors which should be considered in establishing client eligibility guidelines. First, the principal objective of such guidelines should be to maximize the availability and impact of legal services for the poor. Second, there should be sufficient flexibility for local programs to make judgments about which potential clients should be served based upon the facts of their particular cases rather than upon rigid formulas. Third, the cost of administering the guidelines should not be so great that it impacts significantly on the resources available for the delivery of legal services. And fourth, measures intended to assure that abuses of the guidelines do not occur should be designed in a manner which protects the confidentiality of client information.

We are concerned that some provisions of these proposed regulations do not satisfy these principles.

Those eligible for legal assistance under existing eligibility rules who are most likely to be affected by the revised financial eligibility requirements include the elderly, disabled or unemployed who live with relatives or who own their own homes, battered women and children who do not live in shelters, poor small farmers, poor self-employed, migrant workers who need automobiles and native Americans. The very persons who have tried to stay off of welfare would be the most hurt. Representation of client groups would be drastically curtailed as well.

The reason this is so is that the rule would require for the first time that LSC funded offices review in great detail both the liquid and non-liquid assets of a client and bars legal services to any applicant whose household has more than $1.500 of assets ($3,000 in some cases). It should be noted that the Act states that client eligibility should be determined on the basis of factors which include "the liquid assets" of the client, from which it may be inferred that Congress did not intend that non-liquid assets be considered. Section 1007 (a)(2)(B)(i).

The proposed asset review, for example, would require examination of the value of the equity in the applicant's home. In calculating compliance with the $1,500 asset limit, the proposed regulation would include equity interest in a home in excess of $15,000, $30,000 in a farm used to produce income and $4,500 in vehicles including those on Indian reservations. Consider the elderly, a significant number of whom have equity interests in a home in excess of $15,000 that they have owned for years and which has appreciated in value over the years but who have no other assets. It is ironic that the private sector, including the ABA, has been working out means for converting this equity into income (so-called home equity conversion) so that the poor elderly owners may be able to pay the taxes and repairs and perhaps be able thereby to avoid institutionalization. Their incomes are wholly inadequate to permit them to pay for private counsel, however badly needed. And as many of us know, it is frequently only through legal assistance that the elderly can appropriately address their problems and gain other benefits to which they are entitled.

The proposed rule would also eliminate a provision of the existing regulation which permits funded programs to represent clients who are receiving benefits from a governmental income maintenance program without further inquiry.

By virture of the assets test set forth in proposed Section 1611.6, requiring, among other things, consideration of non-liquid as well as liquid assets, the rule would exclude many who have already qualified for publicly funded income maintenance programs such as food stamps, AFDC, and SSI. The result would be another eligibility review, resulting in costly duplication and bureaucratic waste. No adequate rational is provided for the departure from the current regulations which permit funded legal service programs to represent clients receiving benefits from governmental income maintenance programs.

The imposition of narrowly defined national standards of the type proposed appears to be inconsistent with the terms of the LSC Act which permits flexibility so that local programs may develop eligibility standards which utilize resources to best meet the needs of those in need in the community. See LSC Act Section 1007(a)(2)(B); S. Rep. 93-495, 93d Cong., 1st sess. 14 (Nov. 9, 1973). The Corporation and Congress have been moving in recent months to place greater responsibility for the management of local programs in the private bar at the local level, primarily through having a majority of local program boards appointed by local bar associations. The proposed regulations, however, would diminish the decision-making ability of the local boards.

Another area of concern with the proposed rule is the restriction it places on the representation of groups. The present regulations state that representation may be provided to a group whose primary purpose is to further the interests of eligible clients where the group lacks funds to retain counsel. 45 CFR Section 1611.5(c)(2). The proposed regulation would not permit such representation but would require that any represented group "be composed primarily of eligible clients." It should be noted that the poor generally do not have funds to join membership organizations and that there exist many non-membership organizations, of limited means, whose primary or sole purpose is to serve the needs of the poor.

On a more practical level, the proposed rule would require the examination of the individual financial eligibility of each group member, creating another large and unnecessary administrative burden, particularly where the group is composed of those receiving public benefits such as food stamps or other forms of income maintenance.

We presume that, if the asset inquiry is adopted as proposed, in class action litigation the specific asset inquiry, as well as the need for a written retainer agreement which is also required by the proposed regulation, Section 1611.8, would be applicable only to named plaintiffs; but this is not clear.

Still another concern with the asset provision of § 1611.6 is that the assets of every member of an applicant's household will be examined to determine eligibility. Notwithstanding the $3,000 limit for households with a member aged 60 or over, the effect of this regulation either is that those elderly living with family will not qualify for legal services or they will be forced apart from, or will not be welcomed into, the family unit. This result seems highly inequitable.

There is another aspect of the proposed regulations which shocks me as a lawyer, and as a former Chair of the ABA Ethics Committee. That is the requirement that client-identifiable eligibility information be made available to the LSC. This would appear to require disclosure by an attorney of confidential information furnished to the attorney by the client. While the regulation makes an exception for information covered by the attorney-client privilege, Section 1611.7(c)(4), the obligation of a lawyer to a client under the Code of Professional Responsibility is, in most jurisdictions, broader than the privilege in that it covers both confidences and secrets. Code of Professional Responsibility Canon 4 (DR 4-101). DR 4-104 would appear to preclude the type of disclosure contemplated by the proposed regulation. See also ABA Informal Opinion 1394 (Nov. 2, 1977); ABA Informal Opinion 1287 (June 7, 1976); and ABA Informal Opinion 1443 (Dec. 10, 1979). Further, the Corporation Act itself, in Section 1006(b)(3), states quite clearly that the Corporation "* * * shall not, under any provision of this subchapter interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canon of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this subchapter as 'professional responsibilities') or abrogate as to attorneys in programs assisted under this subchapter the authority of a state or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction."

We also note that proposed Section 1611.8 provides that retainer agreements entered into by clients may be provided to the Corporation without the client's having

been given prior notice that this may occur. We believe such notice should be provided.

In conclusion, we understand the Corporation's wish to ensure that limited resources will be utilized in the most effective way. We do not believe, however, that as presently drafted the proposed regulations achieve this objective. The consequence of the implementation of these regulations, in our view, would be the denial of legal services to many deserving clients, including many elderly persons. We will be filing comments on the proposed regulations with the Corporation, and we hope that many of our suggestions will be adopted before the regulations are made final.

Thank you for this opportunity to share with you our views on this important subject.

Mr. BIAGGI. Mr. Kennedy.

STATEMENT OF JOHN DAVID KENNEDY

Mr. KENNEDY. Mr. Chairman, Congresswoman Snowe, thank you for your invitation to appear here today. I am going to depart from my prepared remarks in the interest of time and not address some of the things you have heard a number of times already today. I would like to say a few things on a number of issues that have not been specifically addressed.

First of all, I am not here to tell you that these regulations are all bad, because I don't think they are. There are specific provisions of them that I believe are not helpful to both our clients and programs, and the areas that I would like to touch on are the issue of trust and confidentiality, and the issue of the treatment of pension plans, and finally, to give you two examples of what the practical effect of these regulations might be.

A traditional concern of local legal services programs in meeting our mandate to serve poor people has been to create strong, trusting relationships with our clients. The need for trust and confidentiality in attorney-client relationships is recognized by the law of every State, by the canons of professional responsibility of the legal profession, and specifically by the Legal Services Corporation Act of 1974.

That trust, that confidentiality, is particularly important, and particularly difficult to achieve with poor clients whose encounters with courts, bureaucracies, and creditors are often completely outside of their realm of experience, and pose often terrifying threats to their means of existence. This is especially true with elderly clients.

I am sure it was not the intent of the Legal Services Corporation to impede the development of those kinds of trusting confidential attorney-client relationships. In fact, the proposed regulations state that eligibility should be determined in a way that would promote that type of trust. Yet, to require us the first time we see a client to initially confront them with our own regulatory complexities and documentation requirements, would have precisely the opposite effect, and they will lead the client to conclude that we are indeed just another social service agency rather than advocates for their interests.

The client whose eligibility for SSI payments is in question due to the disputed value of an asset may well be drawn further into the bureaucratic morass, and have to resolve that very issue with Legal Services before we can advocate on their behalf in front of the Social Security Administration.

Let me turn next to the question of the pension IRA and Keogh funds, which I don't think has been addressed very comprehensively. Our program as always disqualified potential clients if they have sufficient liquid assets with which to hire private counsel, and we treat disbursements or withdrawals from a pension fund as regular income when it is received.

The proposed rule, however, would require us to count as immediately and fully available, minus the penalty for early withdrawal, the total value of an IRA or Keogh plan, money which the client has specifically set aside for his or her retirement with the protection and encouragement of the Federal tax code.

In order to deal with a very serious legal problem, one of our clients could be forced to liquidate their entire pension, expend the funds that they receive to hire private counsel and, having done so, then turn to supplemental security income for continued support.

There is clearly no advantage to the Federal Government in this scenario. Only the poor client's loss of income and self-esteem.

Similarly, I won't touch on the equity in a home provision. You have heard a great deal about it, but the equity in a vehicle can have the same type of very unfortunate effects.

The final area I would like to touch on briefly is the administrative burden which implementing the proposed regulations could involve. Last year at Pine Tree we interviewed over 10,000 eligible persons, persons who we determined to be eligible for our services. Many of those interviews were conducted over the telephone, and we offered only brief advice or brief service, and were unable to provide further assistance.

If we were required to document each and every one of the numerous factors that have been listed for each and every one of these clients, it would decrease the direct resources available for advocacy on our clients' behalf in administrative and judicial forums.

That is a special concern with respect to group representation, where if there was a group of 200 people, I take it from these regulations that we would have to determine the assets of each of those 200 persons, before we could determine whether the group was eligible.

This is of special concern to us today, when the budget reductions and the budget freeze of the past 2 years have reduced our overall staff from 75 to 50, and our attorney staff from 30 to 18.

To impose additional administrative burdens at this time, when we have fewer staff to deal with real legal needs, strikes me as inappropriate.

I would like to close with two examples of clients who have been represented by Legal Services, one by Pine Tree and one by myself when I was a staff attorney in a program in upstate New York. Pine Tree last year represented a mother, father, and two children who were living in a camper on the back of a pickup truck, which was parked at the time in a town dump, and which moved on periodically when it was forced to by local authorities.

We represented them in successfully challenging the refusal of the town to give them food assistance, because of that truck, their only asset, which was worth more than $4,500. The value of that asset was the precise question in the issue with the town, in which

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we were succcessful. These proposed regulations would prohibit us from assisting that person.

When I was a staff attorney in upstate New York, I worked in Geneva, and I was fortunate enough to represent a woman who had purchased a headstone for the grave of herself and her husband. It was a joint headstone. She came to see me after the headstone company had repossessed the gravestone by means of a tow truck from the local cemetery, and we sued on her behalf, claiming a number of statutory violations. The case was subsequently settled after I left the program. She lived in a dilapidated old farm outside of Penn Yan, N.Y., and while I don't have any expertise in the valuation of old farms, it is probably fair to say that under these proposed regulations she would still be without a headstone for her grave.

We in Legal Services want to thank you for the opportunity to present these views to you, and to thank the committee for your patience in listening to my views. We appreciate your concern for us and your concern for these difficult issues. We attempt to competently represent often desperate people in very difficult situations, and all we ask is to be allowed to continue to do so. Thank you.

Mr. BIAGGI. Thank you, Mr. Kennedy.

[The prepared statement of Mr. Kennedy follows:]

PREPARED STATEMENT OF JOHN DAVID KENNEDY, EXECUTIVE DIRECTOR, PINE TREE LEGAL ASSISTANCE, INC., PORTLAND, MAINE

Chairman Biaggi, Congresswoman Snowe, and Members of the Committee;

My name is John David Kennedy and I am the Executive Director of Pine Tree Legal Assistance, the Legal Services Corporation grantee for the State of Maine. Our administrative offices are located in Portland, and six services offices are located throughout the State.

I am appearing at the request of Representative Olympia Snowe of the Second Congressional District of Maine, and wish to share with you some of my concerns about the eligibility regulations for Legal Services which have been published for comment by the Legal Services Corporation.

I believe it to be particularly appropriate that a representative of Maine address you, because we are indeed a poor state. Maine's per capita income is 42nd of the 50 states, and one study has concluded that when adjustments are factored in for the cost of living, including our dependence on imported oil, our distance from the country's major food supplies, our severe winters, and the high cost of transportation in rural areas, Maine's real per capita income is the lowest in the nation.

Pine Tree Legal Assistance serves a client-eligible population of 210,000 persons, or nearly 20 percent of the population of the State. The unemployment rate in the State exceeds 10 percent, and in parts of the State one-third of the households receive some form of public assistance payments.

I believe that some elements of these proposed regulations would have an adverse impact on many of those who are eligible for our services, but it is not my purpose to assert that they are all bad, nor do I propose to analyze them for you in great detail.

Instead, I wish to make a few general observations, and will touch on some of the specific provisions I believe you should most closely examine.

A traditional concern of local legal services programs in meeting our mandate to serve the legal needs of poor people has been to create strong, trusting relationships with our clients. The need for trust and confidentiality in attorney-clients relationships has long been recognized, required, and protected by the canons of ethics, the rules of civil procedure, the laws of all our states, and specifically by the Legal Services Corporation Act of 1974. That trust is particularly important and particularly difficult to achieve with poor clients, whose encounters with courts, bureaucracies and creditors alike, are often confusing, are not within their social and educational experience, and pose terrifying threats to their very means of existance. These diffi-

culties in creating a trusting relationship with our clients are often magnified for the elderly.

They come to us often having been trapped in the minutia and complexity of regulations of other social service agencies, having been unable to explain their situation or successfully negotiate for their interests on their own.

I am sure that it was not the intent of the Legal Services Corporation to impede the development of secure and open attorney-client relationships, and in fact the proposed regulations require that eligibility be determined "in a manner that promotes the development of trust between attorney and client."

Yet, to require us to initially confront clients with our own minutia, regulatory complexities, and documentation requirements, would have precisely the opposite effect and may lead the client to conclude that we are indeed just another social services agency, rather than advocates for their interest. The client whose eligibility for SSI payments is in question due to the disputed value of an asset, may well be drawn further into the bureaucratic morass, and have to first resolve that very issue with Legal Services before it can be addressed by the Social Security Administration.

I would like to turn to three specific areas of these regulations where I believe the Corporation has failed to anticipate the serious and negative impacts on clients and local programs. These are the proposed asset limitations on homes and automobiles; the treatment of IRA and Keogh retirement plans, and the administrative burder of documenting and verifying the proposed eligibility factors.

Our program, and I believe most others, has always disqualified potential clients if they had available liquid assets with which they could hire private counsel. We treat regular disbursements or withdrawals from a pension fund as available income. The proposed rule, however, would require us to count as immediately available, the total cash value of any Keogh or IRA pension fund less any penalty for early withdrawal; money which has been specifically set aside by the client for their retirement, with the encouragement and protection of federal tax law. In order to deal with a serious legal problem, an elderly or disabled person could be forced to liquidate their entire pension, expend the funds to retain private counsel, and, having done so, turn to SSI for continued support. There is clearly no advantage to the federal government in this scenario, only the poor client's loss of both income security and self-esteem.

The proposed rules would also prohibit any person from receiving assistance if their household had more than $15,000 equity in a home. This is the particular proposal which you will hear most objection to, and from our experience will present the most serious obstacle to the representation of some very needs persons. We in Maine have argued in a series of cases involving local welfare benefits and property tax abatements, that our clients cannot utilize whatever equity they may have in their homes. Nor, as a practical matter, can they borrow against that equity when they either have no income whatsoever or when their income is, like SSI, barely sufficient to meet their subsistence needs.

The federal Department of Health and Human Services has recognized the plight of elderly people in large old homes, many of whom have insufficient money to adequately heat or maintain those residences, especially where there is no resale market for the homes, and where there is an inadequate supply of affordable rental housing to move into, even if they could sell. The Department last year invited proposals from the states to address that problem, and a grant was awarded to a joint effort by the Maine State Housing Authority, Maine's Bureau of the Elderly, the University of Maine Law School, and the Maine Savings Bank. The study is now underway, and its preliminary findings reinforced our original impressions: that one-third of the elderly are below the federal proverty line, that 70 percent of them own their own home, and the majority own their homes without any encumbrances.

The 1980 census found the median value of a house in Maine to be $37,900, an increases 196 percent over the previous ten years. Thus even very poor people who built or inherited very modest homes will often have equity over the proposed $15,000 limit.

The Maine Home Equity Converson Project is exploring the feasibility of ideas such as sale-leasebacks, shared living arrangements, added apartments, and reverse annuity mortages, to enable these elderly poor homeowners to get some case flow out of their equity. But these creative ideas are not currently in use and would not offer any immediate help to the potential clients who would be disqualified under the proposed rule.

Even is these ideas were in widespread use, all of us know as a matter of common sense that converting real estate equity into available cash be a long and tortuous process. If a client disputes the validity of an account with one of our electric utili-

ties, and the electricity is due to be shut off on the day after the client calls, it will be of little comfort to the client to be advised that they can convert their home equity into cash in six weeks, so that they can then retain private counsel.

To count the home equity over $15,000 as available to the poor to meet their legal needs is thus based on a completely inaccurate factual assumption. To deny people legal services in this situation is not going to result in their hiring their own counsel with those "resources" but will deny them access to counsel entirely.

The final area I would like to touch on briefly is the administrative burden which implementing the proposed regulations could involve. Last Year at Pine Tree we interviewed over 10,000 eligible persons who had requested our services. Many of these were telephone interviews and in many we offered brief advice and provided no further service.

If we were required to document that we had explored and verified every eligibility factor which the proposed rule suggests, we would add significantly to the time our staff spends on that process and directly decrease the resources available to advocate on our clients' behalf in administrative and judicial forums.

The valuation of home or automobile equity can be a technical and time-consuming endeavor. The verification and documentation of questioned assets and income would impose significant administrative and record-keeping costs.

Any depletion of the resources available to us to actually represent clients is of special concern to us today, as the budget reductions and freezes of the past two years have reduced our statewide staff from 75 to 50, and our attorney staff from 30 to 18.

I would like to close with just a few examples of clients whom we have represented recently and who we believe would be disqualified under the proposed regulation.

We represented a mother, father and two children who were living in a camper on a pick-up truck, which was parked at the time at a town dump, and moved on periodically when forced to by local authorities. We represented them in successfully challenging the refusal of the town to provide them with food assistance because of that truck, their only asset, which was worth more than the $4,500 limit permitted for a vehicle in the proposed regulations. We would not be able to accept that case if the rules are adopted.

We are presently representing a 76 year old man who lives alone and still works on the remains of the family farm in Washington County, located in Representative Snowe's District, one of the poorest counties in the nation. He has been receiving SSI but was recently assessed a large overpayment on the grounds that a small piece of blueberry land which he rakes unprofitably is non-contiguous and therefore disqualifies him for SSI. That same issue, as well as his equity in the whole farm, would disqualify him under the proposed regulations.

A few years ago, we represented a disabled man in his fifties, who lives in a house he built himself on 40 acres his parents gave him. (They unfortunately did not understand the importance of reducing this gift to writing). He worked in the woods, with horses, as long as he was able, but his diabetes, circulatory problems, and an amputated foot came to prevent him from earning significant income; however, he still heats with wood taken from his land. He needed counsel in an eviction proceeding brought by his brother. We were successful on his behalf at the district, superior and state supreme court levels, in over two years of continuous litigation. We could not have represented him at all had these regulations been in effect.

I wish to thank Congresswoman Snowe and Chairman Biaggi for the opportunity to present these views, and to thank the Committee for patiently listening to them.

We in Legal Services appreciate your attention to and concern for these difficult issues. We attempt to competently represent desperate people in difficult situations and simply wish to be permitted to continue to do so. Thank You.

Mr. BIAGGI. Welcome. This is the first occasion I have had to meet you in your official capacity, but we know you will do well, with your long history of concern for people.

STATEMENT OF EUGENE CALLENDER

Mr. CALLENDER. Thank you very much. Mr. Chairman and members of the committee, in the interest of time and fairness to others who are waiting to testify, I will not read my entire remarks. I would just like to summarize.

Mr. BIAGGI. They will all be included in the record.

Mr. CALLENDER. Thank you very much. I know the members of the committee will agree that access to justice through the Legal Services Corporation is a civil rights issue not only for the elderly, but all low-income people. Frankly, I am astonished, Mr. Chairman, that these regulations would attempt to disqualify many low-income older Americans from one of the most basic civil rights—the right to have access to justice.

We all are aware of the fact that older people are denied equal treatment in employment, public benefits, housing and other public or private programs. Therefore, an effective nationwide network of legal services programs, serving those without other legal resources, is essential to enforcement of the constitutional rights of all low-income Americans, especially the elderly.

I would first like to point out that these proposed regulations would disqualify two-thirds of the low-income elderly nationwide from LSC aid, with the worst effects including the disqualification of impoverished elderly whose only asset is the home they own and live in.

Second, these regulations would result in the disqualification of older applicants seeking legal assistance because they were denied SSI or medicaid, unless they can meet a means test sometimes even stricter than that for SSI and medicaid themselves. Third, the regulations would result in the disqualification of older people who are in a "spend-down" situation, spending down from above 187.5 percent of the poverty level.

It seems these proposed regulations are saying to these older people: First of all sell your home. Second, spend the proceeds on necessary medical services, and then even though you have met the more stringent test for the Legal Services Corporation, you are still not eligible for legal assistance if your gross income, most or all of which may be required for medical care, exceeds $11,500.

Mr. Chairman, over the past few years, we have attempted in New York to deal with the problem of providing adequate legal services to our State's elderly. We have joined efforts with the New York State Bar Association, and the Legal Services Corporation, and we are working toward a coordinated effective approach of dealing with the legal problems of the elderly. However, if these proposed LSC regulations are allowed to stand, the aging network in New York State will not be able to meet the needs of these persons who will be hurt by this process. It will then mean that unless Congress takes action and dramatically increases the appropriations under the Older Americans Act, these persons will be totally unrepresented and will be denied basic civil rights.

Mr. BIAGGI. Thank you, Mr. Callender.

[The prepared statement of Mr. Callender follows:]

PREPARED STATEMENT OF EUGENE S. CALLENDER, DIRECTOR, NEW YORK STATE OFFICE FOR THE AGING

Chairman Biaggi and Committee Members, although it is always a great honor and a personal pleasure to testify before Congress, I find it especially gratifying that my first congressional testimony since receiving my law degree last year and since becoming Director of the New York State Office for the Aging this year should concern both a major civil rights issue and a threat to the principles of the American legal system.

But on a deeper level, I find it astonishing that any Administration should threaten to disqualify most low-income older Americans from one of the most basic civil rights—the right to have access to justice.

Because many older people continue to be denied equal treatment in employment, public benefits, housing, and other public or private fields, an effective nationwide network of legal services programs serving those without other legal resources is essential to enforcement of the constitutional rights of all low-income Americans, including the elderly.

Yet we are here today because the Reagan Administration's appointees to the Legal Services Corporation have proposed a devastating set of draconian regulations which would, in New York State and across the country, prohibit up to two-thirds of low-income elderly from being served with LSC funds.

These dreadful proposals would be laughable, if the Reagan Administration's LSC Board were not so deadly serious about them.

One of the worst effects of these proposed regulations would be to prohibit local LSC lawyers from serving impoverished elderly whose only asset was the home in which they live.

Another unreasonable aspect of these regulations would prohibit local LSC lawyers from representing any older person improperly denied Medicaid or Supplemental Security Income (SSI) benefits unless that elderly person can also meet an income and assets test even stricter in some respects than that applied for the Medicaid and SSI programs themselves.

In addition, these regulatory proposals would prohibit LSC lawyers from representing any low-income older person who wished to resist involuntary commitment to a nursing home (or forestall eviction) if his or her gross income before accounting for medical costs exceeded $11,500 (for a one-person household).

Chairman Biaggi, you and your colleagues on this Committee know all too well that isolated elderly people across the country face medical costs of many thousands of dollars each year. Yet, according to the proposed LSC regulations, these older people would be "not poor enough" to have an LSC lawyer help them avoid being evicted and obtain in-home care under Medicare, Medicaid, or other public or private health programs.

Taken together, these proposed regulations would say to the elderly homeowner struggling to stay in the community and facing high medical costs plus potential eviction:

First, sell your house. If you own the house, you are not "poor" enough to receive legal assistance. (And by the way, in New York as across the country, about half the elderly are homeowners; in rural areas, almost 70 percent of the elderly own their homes—though perhaps not much else.)

Second, spend the proceeds from sale of your house on medical care or other necessities. If you haven't spent the proceeds, you are not "poor" enough to receive legal assistance.

Third, impoverish yourself sufficiently to become eligible for Medicaid and SSI. Unless you also meet the stricter means test proposed for LSC, you are still not "poor" enough to receive legal assistance.

Finally, once you have sold your home, spent the proceeds on medical care, and met the more stringent resource tests for LSC, then you are still not eligible for legal assistance if your gross income (most or all of which may be required for medical care) exceeds $11,500. At this point, it is too late for even the best legal assistance to give you much chance of remaining independently in the community.

If allowed to stand, these proposed regulations would create a new class of poor—the elderly poor—for whom the Corporation is funded but cannot serve. In New York State, this class would consist largely of elderly SSI and Medicaid participants whose medical expenses reduce their spendable income below poverty levels. these elderly would be deprived of the best help available when they have a problem dealing with the quagmire of Federal and State regulations surrounding these poverty programs.

As Director of a State Office for the Aging, I must also say a few words about the devastating effect of these LSC restrictions on legal services for the elderly provided by the aging network under the Older Americans Act.

In 1978, when Congress required each State and Area Agency on Aging to provide legal services to the elderly, it also instructed State Agencies to assure that this Older Americans Act funding did not replace legal services to elderly poor from LSC programs. Rather, Older Americans Act legal service programs were required to be coordinated with local LSC grantees (contracting with them where possible) to assure that aging network funds addressed legal needs not otherwise met by LSC programs.

If two-thirds of the elderly poor are now to be excluded from eligibility for LSC services under the proposed regulations, there is no possible way that the aging network can pick up the slack unless Congress dramatically increases appropriations for the Older Americans Act. And while I applaud the strong support of Chairman Biaggi and other Members of this Committee to increase Older Americans Act funding, I also recognize that under this Administration no dramatic increases in social service funding will occur to fill the gap that these regulations would create in the system of delivery of legal services to the elderly.

Over the past five years, New York State's aging and legal services networks have made major strides to ensure full coordination of legal services to the elderly, including much greater involvement of the private bar. Based on a joint Memorandum of Understanding between the New York State Office for the Aging and the Regional Office of the Legal Services Corporation, we have joined with the New York State Bar Association to create a Statewide Committee on Legal Services for the Elderly. This statewide committee reflects all parts of the aging network and the legal community, including both LSC and the private bar, to expand our joint efforts to provide legal services to all older New Yorkers in need.

Even under current LSC regulations and funding levels, most low-income elderly citizens in need of legal services will not receive them. Yet (together with poor families, the disabled, and other groups in need), these low-income elderly suffer the worst legal abuses of all—denied their rights to employment, to adequate housing, to comprehensive medical care, and all too often even denied their constitutional rights of due process and equal protection.

When the Federal Government seeks to deny Social Security benefits to massive numbers of disabled Americans;

When older Americans continue to face discrimination;

And when most older people who are wrongfully denied public benefits quietly accept this mistreatment because of their trust in the very government that is now threatening to refuse them legal assistance;

Then it becomes a civil rights imperative for the aging network, for the legal community, and for all Americans to oppose these proposed regulations which would eliminate the only effective voice for many poor and elderly Americans: An LSC lawyer to speak on their behalf.

BACKGROUND MATERIAL BY EUGENE CALLENDER SUBMITTED FOR THE RECORD OF THE SEPTEMBER 22, 1983 HEARING ON PROPOSED LSC REGULATIONS

In submitting background material concerning the proposed LSC regulations, I want to thank Chairman Biaggi and the Subcommittee for arranging this hearing to examine the proposed new rules on eligibility for assistance provided by the Legal Services Corporation. I appreciate the opportunity to submit this material on behalf of the New York Office for the Aging.

I would like to begin by saying that the New York State Office for the Aging and other state units on aging would agree that in a time of ever shrinking resources, there is a need to focus all of the efforts human service agencies on those most in need of our time and effort. Representation of eligible clients in their pursuit of their rights and benefits, which will enable those with the least resources to continue to exist independently and with dignity is the highest mission of all publicly funded legal services programs, LSC and Older Americans Act (OAA) Title III Programs alike. We must all work together at the State and local level to enable this mission to be carried out. But it is clear to me after my short four months at the helm of the New York State unit on aging that the variety of situations and problems facing individuals at the local level demands local initiative in meeting the needs which arise there. As you know, the OAA permits a considerable amount of discretion and responsibility to remain at the local level especially in the area of determining needs and priorities. We believe that the same should be true of other human service providers as well. Our legal service programs function very well under this principle with only technical assistance, monitoring and general guidelines from the State.

These regulations proposed by the Legal Services Corporation national office seem to be focused on removing all, if not all, of this type of flexibility of local programs to respond to local needs and local situations. No one would argue that there have been isolated instances of local abuses of discretion in the past. But the Congress spoke in the recent past with regard to the measures it felt were necessary to address these problems. Those measures severely restricted the Corporations actions in the political and advocacy spheres. These proposed regulations changes now seek to add to those restrictions by severely, and unnecessarily, placing irrational and

poorly thought-out income and asset restrictions upon individuals seeking assistance from the Corporation. Individuals who were eligible because of local situations and problems would now be ineligible. Individuals who own their homes, mainly the elderly, would now be ineligible. These people would not be less poor—they would just no longer be able to seek assistance from LSC.

If allowed to stand, these proposed regulations would create a new class of poor, the elderly poor, for whom the Corporation is funded but cannot serve. This class would consist of New York's elderly who receive SSI and Medicaid only those whose medical expenses reduce their spendable income below poverty levels. The elderly would be deprived of the best services available to assist them with their legal problems in dealing with the quagmire of federal and state regulation of their eligibility and benefit levels in these poverty programs for which they qualify. This will result in a considerable drain on the already stretched resources of the OAA Title III funded legal programs which have been established to work together with the Corporation—not to replace the Corporation.

Congress, through the Older Americans Act, declared legal services as a priority mandated service to elderly in 1978. Congress took this action because, based on several studies, it recognized that the elderly have a great need for legal advice and counsel in order to obtain their rightful share of the benefits and entitlements offered by the government and that elderly did not in fact have access to the services of attorneys to protect these or other legal rights. Congress also instructed the State Agencies that in implementing this priority service its Older Americans Act funding was not to replace the services available to elderly poor from this other federally funded program of legal assistance, but to be coordinated with local LSC grantees (contracting with them where possible) to assure that those low income elderly who did not presently have access to the LSC program and could not afford private representation would have access to legal assistance.

The New York State Office for the Aging has endeavored for the last five years to implement the objectives of this Program as specified by the act—has worked to coordinate with local LSC grantees to expand the services which they offer to eligible elderly clients throughout the State. Just this year the State Office for the Aging executed a Memorandum of Understanding with the Regional Office of the Corporation which we hope will solidify our efforts to obtain these expanded services for elderly poor locally. Our Office is also participating in a Statewide Committee, composed of all segments of the legal provider community, including the Corporation, in an effort to expand legal services from all sectors to elderly who need such legal service. But this is not enough. Administration cuts in public programs which address the needs of the poor and the low income elderly especially have severely taxed the resources of all programs, but especially the legal programs which must defend individuals from attempts by federal, state and local governments, to achieve massive cuts in these programs by improperly denying benefits to entitled individuals. The massive initiative of the administration to cut back the disability rolls is but one extreme example.

I am here today to impress upon Congress and the Corporation and the Administration the destructive effect these new financial restrictions placed on individual clients seeking legal assistance from the Corporation grantees will have on the eligibility of low income elderly for those services and upon the aging network's and New York State's efforts to coordinate in the way intended by Congress to serve the legal needs of our most vulnerable population, the low income and poor elderly. I ask you to do what you can to see that these proposed regulations are withdrawn.

The first of these restrictions, Section 1611.6, concerns the maximum allowable assets an individual may have and still be eligible for service from the Corporation. This section proposes to deny legal representation to individuals who reside in household whose liquid and non-liquid assets exceed $1500 and an additional $1500 if there is an elderly person as a member of the household. As if this is not enough, this section also proposes to include among there assets, the equity value of a residence owned by the household, excluding only $15,000 equity value in a residence and $30,000 equity value in a farm which is the residence of the individual, all but one burial plot per household—not one per person, one per household, and any licensed vehicle whose value exceeds $4500 regardless of its use for employment transportation or whether it is equipped for a handicapped person.

The resource limitations proposed by these regulations are more restrictive than any of the present benefit programs designed to meet the minimum basic needs of the poor in this country. People who are lucky enough to have the resources Congress has said are minimal and necessary to existence, will not qualify for legal services. Most of the elderly and handicapped of New York will be ineligible for assistance from the Corporation.

I must state very clearly that the counting of the value of the residence in this way will virtually deny the Corporations assistance to every elderly homeowner in New York State, if not nationwide. The median value of a single family home in New York State, due mostly to the past years' inflation, is $52,422. Less than 3 percent of New York's homes are valued at less than $15,000. The $30,000 equity value for farm property is equally as absurd. A sixty acre farm, which is a very small farm, valued at $500/acre, very low indeed, would equal $30,000.

A large percentage of elderly are homeowners. It is generally their only valuable asset, the mortgage having been paid off over many years of labor and saving. In New York half of all elderly households own the homes in which they live (1.5 million elderly households). In urban areas, 30 percent of the elderly own their homes, but in rural areas, 70 percent of the elderly are homeowners. These elderly are not the "well to do". More than 14 percent of older households have incomes at or below the proverty level; 25 percent have incomes below 125 percent of proverty. By income, these elderly should be eligible for the services of the Corporation. But despite their proverty-level incomes, these older homeowners would be automatically excluded under these proposed regulations.

The second area of major concern, Section 1611.14 and 1611.15, concerns the cap proposed to be placed on the flexibility of local grantees when considering spendable income instead of actual gross income of an individual for purposes of deciding whether the individual may be eligible for the service. Presently, the local LSC grantee may consider an individual for representation even though his or her income exceeds the maximum limit if the income received is reduced by necessary expenditures such as fixed debts, child care, work related expenses and especially medical expenses. The proposed regulations would limit the amount of these other actual and necessary expenses could reduce the countable income of the individual. In effect, no person whose income exceeds 187 percent of the federal proverty level, no matter what the circumstance and no matter what the legal problem (such as improper disqualification from a public benefit program) could be represented by the Corporation grantee. The amount of that income ceiling is approximately $11,360 per year—assuming that the local grantee chooses to set its own maximum at the higher 125 percent of proverty level rather than at 100 percent.

The elderly spend more on health care than younger people. Low income, minority, and 75+ populations are most likely to be in poor health. Only 14 percent of the senior population not in institutions can claim to be free of chronic diseases. According to 1977 statistics, older people require more physician visits to maintain their health and a greater proportion had visited the doctor in the last six months. Furthermore, the so called "old old" population, the most frail and therefore, most likely to have the highest medical bills, are increasing at staggering rates. In the last decade the 75+ group increased by 21.1 percent and the 85 plus group by 44.1 percent. The proposed cap on consideration of excess medical expenses would impact most heavily on this group which reduce their spendable income to below the poverty level. They would not even be eligible for LSC representation in a dispute with the local Medicaid agency concerning entitlement to relief from these medical costs.

A third area which ivokes my grave concern is the inclusion of the value of IRA's and KEOGH plans among the countable assets of an individual which would be required to be liquidated to pay for legal representation. Do we really, as a matter of national policy, want to create a new generation of poor elderly by restricting the ability of low-income younger Americans to save for their own future?

My concern is not for the people who are now elderly; in all likelihood, they do not now have IRA's or KEOGH's for their retirement. It is the elderly of the future who would be harmed by those precedent of requiring liquidation of funds saved in these effective and protected methods of providing for their future financial security to assure that they do not become dependent on public assistance in their old age.

As advocates for the elderly, one of our responsibilities is to help younger people prepare for their later years. While it is difficult to prepare for some of the physiological changes that take places as we age, one of the areas where pre-Planning has proven most effective is in the area of saving for retirement. The baby boom babies will be 65 in the year 2010. At that time, our elderly population will swell to 16 percent of the total population. That group, now in their thirties, are being encourage by the Federal Government to open IRA and KEOGH Accounts to plan for their future.

The Social Security scare created by the Administration last year tested the younger population's faith in Social Security as a retirement resource. Looking for an equally safe private investment, many turned to IRA's and KEOGH Plans. The tax deduction offered by the Federal Government in 1982 has also made this method of

saving more enticing. As an advocate for the elderly, I applaud this means of encouraging personal initiative in saving for one's retirement.

The average American's personal income decreases by 50 percent upon retirement. For a great number of its recipients, Social Security does not provide an adequate level of income, much less match the expections of a pre-retirement standard to reward a lifetime of work and saving. Many woman, minority, and low-income groups will not have worked in one job long enough to become vested and receive a supplementary pension. Therefore, IRA's are most vital to providing sufficient retirement income, helping people to remain independent and avoid dependence on public income maintenance programs. This proposed requirement for younger people to cash in their IRA or KEOGH plan and assume the penalty loss before becoming eligible for legal assistance is counterproductive to our national goal of assisting people in remaining self-sufficient and independent in their later years. Those with the foresight to scrimp and save to put away for their old age will be penalized. And we will be adding to the numbers of low income elderly who will have to be supported in the future through Federal, State, and locally funded poverty program of all sorts.

LSC is a vital program for low income people of all ages, including the elderly. As Federal programs continue to be cut back, eligibility criteria are continually being changed to eliminate beneficiaries. The weakest are eliminated. Lawyers should represent the weakest so that they do not suffer disproportionally because of their weakness.

Our network of fifty-nine county-level Area Agencies on Aging in New York State is doing its utmost to help older people through the legal and bureaucratic maze which confronts them. As mandated under The Older Americans Act, legal services are a priority service in every county of New York State. Last year, these fifty-nine programs assisted approximately 14,000 older people with their legal problems at a total cost of 1.4 million dollars. If LSC grantees were forbidden to serve those low-income elderly most in need, most poor older New Yorkers will have even less access to the legal assistance they need.

Mr. BIAGGI. My colleague, Mr. Bilirakis, made reference to an amendment that I authored in 1977 with relation to the Legal Services Corporation which, in the light of the problems that the elderly and the handicapped faced in obtaining to a minimal amount of legal service, provided that they be given priority. So far, their condition has improved. It hasn't reached the point that we would like, but certainly the elderly and handicapped are not on the back burner. They are not a neglected community, and happily that amendment has been substantially productive.

The reference you make to the elderly and the handicapped and of course the poor, as all of the witnesses have made, Mr. Kennedy, Mr. Tondel, is one that concerns us all. We have had two illustrations, living examples of the benefits of the program, and I am sure each of you could produce countless, hundreds if not thousands, of such beneficiaries. Obviously we are dealing with a very practical problem of finance, and it will take an unified effort on the part of all of the people interested in the Corporation, as Mr. Bogard obviously is, and his Board of Directors is, to maximize utilization of the dollars involved and hopefully get some more so that we can provide more services for those hundreds, millions really who go unattended.

Thank you very much, Mr. Callender. Are there questions of Mr. Kennedy?

Ms. SNOWE. I just have one, David. I was interested in the dimension you raised in the proposed regulations about changing the privileged relationship between the client and the lawyer. Does this suggest in the changes in this regulation that all information is provided by the client to the lawyer in Legal Services would have to be turned over to the corporation? Does that mean everything?

Mr. KENNEDY. No, it doesn't.

Ms. SNOWE. What does it suggest?

Mr. KENNEDY. What it does suggest is that all data that we receive with respect to the client's eligibility would have to be turned over to the corporation upon request. It is not so far-reaching as to require that all of the client's information about their case be automatically turned over.

However, I think to even make that kind of a disclosure is a significant departure. It is a departure from what the act appears to require, and it might very well put us in conflict with the ethical and legal provisions required of us by the State of Maine. I don't know how we would resolve that issue.

Ms. SNOWE. But is this an unusual change, turning over that kind of information?

Mr. KENNEDY. It is almost unprecedented. The only similar provision is another new regulation which the Corporation implemented about 6 months ago, which would require us to disclose data going to a person's citizenship status.

Ms. SNOWE. I thank you very much for coming from Maine. Mr. Callender from New York, I appreciate your testimony here today on a very important issue. Thank you for your contribution.

Mr. CALLENDER. Thank you.

Ms. SNOWE. The next panel will be the National Aging Organizations, Jacob Clayman, president of the National Council of Senior Citizens, James Hacking, assistant legislative counsel for the American Association of Retired Persons, and Elma Holder, executive director of the National Citizens Coalition for Nursing Home Reform.

Given the limitation on time, we ask you to confine your remarks to maybe 2 or 3 minutes, if that is possible.

Unfortunately, under the circumstances here today and with the votes and everything, it has cut down our time even shorter.

PANEL 3: NATIONAL AGING ORGANIZATIONS, CONSISTING OF ELMA HOLDER, EXECUTIVE DIRECTOR, NATIONAL CITIZENS COALITION FOR NURSING HOME REFORM; JAMES HACKING, ASSISTANT LEGISLATIVE COUNSEL, AMERICAN ASSOCIATION OF RETIRED PERSONS; AND JACOB CLAYMAN, PRESIDENT, NATIONAL COUNSEL OF SENIOR CITIZENS

STATEMENT OF ELMA HOLDER

Ms. HOLDER. My name is Elma Holder, director of the National Citizens Coalition for Nursing Home Reform, an organization comprised of 200 local groups and many individual members throughout the country.

Our member groups are largely made up of nursing home residents, their friends and relatives and other concerned citizens.

The majority are run through voluntary contributions, small grants and almost all are low budget operations.

Their purpose is to improve the quality of life for nursing home residents, more than half of whom are medicaid recipients. Because they are isolated from the rest of the world and dependent on the institution for all their needs, for many residents a group of friends

and relatives or concerned citizens is their only outlet for voicing concerns about their care.

In turn, our member groups, as well as our national coalition, rely greatly on the advice and counsel of legal services attorneys who are often the only attorneys in an area with expertise in the Federal and State programs that regulate nursing homes.

While we oppose the proposed restrictions on eligibility which could affect nursing home residents because of the importance of legal services to the work we do, my testimony focuses on group representation.

We strongly represent that the Legal Services Corporation withdraw its proposal concerning group represenation and instead retain the existing eligibility requirements for groups.

There are many good reasons for retaining this rule. Nursing home residents are vulnerable. The median age is 81. They are also frail and dependent on the institution in which they reside.

Many residents never have visits from anyone. Only about 10 percent ever spend a night away from the facility except for medical reasons.

The vulnerability of residents transcends income levels. A private pay resident who is not eligible for Legal Services may have the same concerns about the operation of the facility that a medicaid resident has. Neither person may wish to express those concerns individually for fear of retaliation.

Retaliation is a legitimate concern of nursing home residents. A number of courts, recognizing this, have permitted plantiffs to proceed anonymously to protect themselves.

As Congressman Wyden expressed earlier, another way to protect residents from retaliation is to have their concerns expressed through a community group or a local nursing home ombudsman program. These groups need counsel from Legal Services programs to effectively represent the concerns of residents.

Since the protection of the rights of nursing home residents may depend on the presence of an interested community group or ombudsman program, access by that group to the facility is critical.

In several States local groups have needed legal representation in order to gain such access. Courts have noted the isolation of nursing home residents, and have even found the nursing home environment like a company town where the residents' lives are defined and confined by what exists within the walls of the institution.

Local community groups need legal services in order to obtain access to many facilities across the country.

Another specific concern we have is that relating to medicaid discrimination against residents. Not only do medicaid recipients need protection, but also private pay residents, who often pay high rates for a long period of time before they must convert to medicaid, need representation from legal service persons.

Our member groups often seek assistance from legal services in helping to enforce nursing home standards, particularly the residents' rights and quality of care issues.

In representing groups on such matters, regardless of the composition of the groups, the Legal Services attorneys are acting to help protect public moneys.

Their representation helps to insure the proper expenditure of the billions of Federal and State dollars paid out by medicaid for nursing home care.

In closing, I would just say that because of the vulnerability and isolation of most nursing home residents, and because of the needs of low-budget community groups serving these individuals, we strongly urge that Congress help us persuade the Legal Services Corporation to retain the current requirements for group representation.

Thank you.

Ms. SNOWE. Thank you, Ms. Holder.

Mr. Hacking.

STATEMENT OF JAMES HACKING

Mr. HACKING. Thank you.

I would like to submit the Association s statement for inclusion in the record; I shall summarize in the interests of time.

I am Jim Hacking, the assistant legislative counsel for the American Association of Retired Persons, which has a nationwide membership now well in excess of 14,700,000 persons age 50 and older.

The proposed rules on eligibility, if allowed to stand, obviously will severely constrict the elderly's access to needed legal representation.

The promulgation of these rules is particularly difficult to understand because a convincing case has not been shown for abandoning the existing eligibility criteria.

Present eligibility regulations of the Legal Services Corporation insure that only the most needy clients receive assistance by allowing the recipients of Legal Services Corporation moneys to look at the income and financial circumstances of each applicant.

LSC's proposed eligibility requirements narrow eligibility in a whole series of ways, including through the establishment of an absolute maximum income ceiling that would be used to deny assistance without exception.

At this hearing, the witnesses have already gone into virtually all of these various ways of narrowing eligibility. At this point then, I shall only comment on only one aspect.

As opposed to the current regulation, the proposed regulation would presume that persons whose income exceeds 125 percent of poverty, because of the receipt of Government income maintenance benefits, are not eligible for services.

The administration of this provision will greatly burden the Legal Services attorneys who will have to separately investigate the financial status of potential clients whose poverty status has already been established under the criteria of other Government income support programs.

To us this makes no sense at all.

In conclusion, Mr. Chairman, considering the fact that Legal Services programs have suffered decreased funding for the past few years, there is no justification for stretching already limited resources even further by imposing this kind of a burdensome rule especially in conjunction with other rules that have been discussed

here. The Association urges that this regulation, in its entirety, be withdrawn.

Thank you.

[The prepared statement of Mr. Hacking follows:]

PREPARED STATEMENT OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS

I. INTRODUCTION

The Association is pleased to have the opportunity to testify before the Subcommittee on Human Services regarding the proposed rules on eligibility for assistance by the Legal Services Corporation. These rules, if enacted, would severly limit the elderly's access to needed legal representation. Their promulgation is particularly difficult to understand because no cause has been shown for abandoning existing eligibility criteria. The Association hopes that these hearings will serve as a demonstration of the wrongness of the approach suggested by the current management of the Corporation.

II. LEGAL NEEDS OF THE LOW-INCOME ELDERLY

Legal service programs are essential to the elderly because large numbers of persons over 65 cannot afford to purchase private legal representation. In 1972, over 6 million elderly persons, roughly one in four persons 65 or older, had incomes of under 125 percent of the poverty level. Low-income elderly persons have not only the same legal service needs as most other Americans, but also have additional legal requirements directly related to their health, income, and discrimination problems. Legal services have helped these persons obtain basic necessities such as health care, in-home support services, and benefits from programs such as social security and SSI.

The Legal Services Corporation was created in 1974 to provide legal assistance to those persons who were financially unable to afford it. Hundreds of thousands of persons have been assisted directly or indirectly by legal service offices throughout the country. Present eligibility regulations of the Legal Services Corporation insure that only the most needy clients receive assistance by allowing the recipient offices to look at the income and financial circumstances of each applicant. An applicant's income, including government income maintenance benefits, is considered along with several non-income factors which in the aggregate give an accurate picture of the applicant's ability to afford legal services.

III. THE PROPOSED ELIGIBILITY REQUIREMENTS

LSC's proposed eligibility requirements narrow eligibility in several ways. First, a maximum income level is imposed, and persons with incomes above it would be denied assistance without exception. Second, persons whose income exceeds 125 per cent of the poverty level because of government income maintenance benefits would no longer be presumed eligible for legal services. Third, a new scheme for determining the impact of non-income factors upon a client's need for legal services is proposed. Included in this is an assets test measuring an applicant's liquid and nonliquid assets, and the mandatory consideration of the consequences of denial of legal services as a disqualifying factor. Other changes, such as stricter requirements for eligibility for group representation, and the disclosure to the Corporation of a client's financial eligibility, combine to substantially limit the availability of legal services to the elderly.

We would like to bring the Subcommittee's attention the impact of several of these proposals upon the low income elderly community.

A. The consideration of non-income criteria

Under the present regulations, persons with incomes over the maximum income level (generally 125 percent of poverty) may be assisted if the recipient determines, after weighing several non-income factors, that the clients' circumstances require that they receive assistance. The proposed regulation makes substantial changes in both the factors used in determining exceptions and the way the factors are to be used by the recipient.

The proposes regulation divides these factors into two types, "favorable" and "unfavorable". "Favorable" factors, which generally consider a client's debts and expenses, allow a recipient to grant assistance to a client who would, because of income, be otherwise ineligible for services. "Unfavorable" factors, on the other

hand, are used to deny legal services to eligible clients. The recipient is required to consider such factors as the consequences for the client if services are denied, the existence of liquid and nonliquid assets which exceed specified amounts, and the availability of low cost private legal representation for the matter at hand. These factors expand the criteria used in denying legal services to potential clients, and will serve to make ineligible for legal services many low-income elderly persons.

1. The assets test

The present regulations require that a client's liquid net assets be taken into account before they are given legal assistance. No maximum level is set, nor are nonliquid assets considered. The recipient is given the discretion to decide whether the totality of the applicant's financial circumstances justify granting them assistance. The new proposal, however, sets up a detailed asset test which includes both liquid and nonliquid assets. Generally, maximum allowable assets, both liquid and nonliquid, of an applicant's household, shall not exceed $1,500, except that where a household includes a person over age 60, the limit is $3,000. Certain exclusions from this maximum include up to $4,500 equity in a car, $15,000 equity in a home, and $30,000 equity value in farmland.

This test, when viewed in light of the circumstances of the typical low-income elderly person, will unjustly deny legal assistance to an enormous number of deserving individuals.

According to 1982 census data, there are nearly 3.25 million persons over age 60 living in owner-occupied homes who have incomes below 100 percent of the poverty level. This figure constitutes approximately 80 percent of all elderly people living on less than poverty level incomes. Assuming that this figure can be used to estimate how many people whose incomes are less than 125 percent of poverty live in owner-occupied housing, well over 5 million poor or near-poor elderly people could have their access to legal representation jeopardized by the consideration of nonliquid assets.

Recent studies have shown that the homes of older Americans are their most common and most valuable asset. According to Bruce Jacobs of the University of Rochester, who looked at the home equity of low-income elderly persons receiving public assistance, 42 percent of the population studied had $15,000 or more net home equity in 1977. Considering the effects of inflation on home equity values since 1977, the numbers could be significantly higher today.

Under the proposed rules, most low-income elderly homeowners would be denied legal assistance because of their homeowner status. There appears to be no rationale for this major change in policy. Certainly, the Association feels that it is a disastrous policy to force an older person to sell their home and spend the proceeds before legal assistance becomes available.

A second harmful provision is the household assets test. For elderly persons living with others, be they related or unrelated individuals, the assets of the entire household are considered in determining an individual's eligibility. While the maximum allowable amount of assets for a household containing an elderly individual is $3,000 (rather than the $1,500 general rule), this provision will nonetheless exclude elderly persons living with their families from legal service eligibility. This policy is unfair in that it penalizes those elderly persons who are able to live with relatives. The LSC makes the assumption that low income elderly persons living with relatives in a household that has over $3,000 in assets will have their legal needs met by their family members. Such an assumption is totally groundless.

2. Other non-income factors

While the assets provisions are the aspects of the proposed rule most detrimental to the elderly, other sections raise potential problems, or at least require clarification. For example, the present factor of "age or physical infirmity" has been changed to "expenses associated with age or physical infirmity." The intent of this alteration is not clear, and the problems with the existing language have also not been explained by the Corporation.

Additionally, as an unfavorable factor for an otherwise eligible client, a legal services attorney must consider "the availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought." While legal services attorneys should confine their services to people who cannot otherwise afford legal assistance, it is difficult to envision situations in which the eligible client population can pay for lawyers on their own. Some guidance from the Corporation should be provided regarding its interpretation of when an eligible client can afford private counsel.

B. Elimination of the "But for Government Benefits" test

Under the present eligibility requirements, a person whose income exceeds 125 percent of the poverty level because of govenment income maintenance benefits such as SSI or AFDC is exempted from the general rule that persons whose income exceeds the recipient's maximum level are not eligible. Current rules make these individuals presumptively eligible because they have already met strict eligibility tests in order to receive these benefits. These new regulations, however, would no longer presume that persons whose income exceeds 125 percent of proverty because of government income maintenance benefits are poor. Such persons would be presumptively ineligible for legal services, and could be assisted only after the recipient reviewed several factors and found that the client was financially unable to afford legal assistance.

In addition to rendering some clients ineligible for legal assistance when they probably need those services, this provision will greatly burden the legal services attorney. If the relevant welfare agency has deemed the client poor enough to receive public benefits, this decision should be sufficient proof of eligibility for legal services. To force the attorney to investigate the financial status of the client is to waste the scarce resources that are available to legal services programs.

IV. THE PROPOSED REGULATIONS, ON THE WHOLE, ARE BURDENSOME AND UNNECESSARY

As indicated earlier in this testimony, the Association is concerned that the assets test that the Corporation plans to impose on clients will deprive many, if not most, low-income elderly persons of needed legal services. However, even for those who remain eligible, the proposed regulations will limit the quality of the services being provided them. The Corporation is attempting to require legal services attorneys to conduct a massive investigation of each potential client's financial situation. Considering the fact that legal services programs have suffered through decreases in funding for the past few years, there is no justification for streching their resources even further by imposing these burdensome regulations. In addition to burdening the legal services attorney, these proposed rules will make it difficult for the lawyer and client to develop the working relationship that can be achieved through the current system of selecting eligible clients. Section 1611.7(a) of the proposed rule states, "A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client." This demand is totally inconsistent with the intent of the rest of the proposed regulations.

Another problem with these proposals arises when they are viewed in conjunction with the "denial of refunding" proposals recently offered by the Corporation, 48 Fed. Reg. 36845 (August 15, 1983). LSC proposes to deny refunding to any recipient who significantly fails to comply with a provision of law, rule, regulation, or guideline issued by LSC. The financial reporting requirements of the eligibility proposal could fall within these provisions: a recipient's failure to abide by them may provide LSC with grounds to deny them refunding. This may prove signficant given that the proposed eligibility rules require the recipients to delve deeply into the financial situation of their applicants and make such information available to the Corporation for review. This may impact upon the attorney-client privilege; while the proposal does not require attorneys to violate the privilege, it does require that they disclose financial information. Financial eligibility information may well fall within this privilege.

The proposed rules on client eligibility present enormous problems for legal services attorneys and for low income elderly persons who need their services. It is particularly difficult to see their merit because the present system of selecting eligible clients appears to function properly. Because of the harm that these proposals can cause the low income elderly, the Association urges that they be withdrawn.

Mr. BILIRAKIS [presiding]. Mr. Clayman.

STATEMENT OF JACOB CLAYMAN

Mr. CLAYMAN. Thank you. I shall try to summarize my statement.

From the very beginning this administration has shown unhappiness, dissatisfaction and distrust of this program. The evidence is clear.

It would have expunged it from existance if it could, but it can't. The rules that were submitted and the discussion we have had today is evidence, in my judgment, of the unhappiness of the administration with this bill.

Let me give you just a wee bit of statistical evidence. It may very well be that it is somewhere in the record now. I haven't heard it today.

During 1981 and 1982, the budget for Legal Services Corporation has dropped from $321 million when President Reagan took office to the current $241 million. We heard today the complaint of the President of the Corporation, the Legal Services Corporation, that he doesn't have enough money. There we are.

The fault is not so much with Congress as it is with the administration; 354 field offices have been closed, 354; 4,051 field program staff have been separated; 1,546 field attorneys have been cast off. When one looks at these statistics, one wonders how the Corporation has been able to survive at all, and if we give credence to the rules that have been suggested to Congress and which we heard about today, the figures I have read will be paltry against what will develop from such acceptance of the rules.

I wish I had more time, but I don't, and I appreciate being here notwithstanding.

Mr. BILIRAKIS. Thank you, Mr. Clayman.

[The prepared statement of Mr. Clayman follows:]

PREPARED STATEMENT OF JACOB CLAYMAN, PRESIDENT, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. Chairman, good afternoon. I am Jacob Clayman, President of the National Council of Senior Citizens. The National Council of Senior Citizens is a non-profit, non-partisan organization dedicated to protecting the rights of all senior citizens. A great deal of our work is directed at advocating on behalf of low-income senior citizens and working to preserve those government programs which allow them to attain an acceptable standard of living. We believe that the regulations proposed by the Legal Services Corporation would contradict the purposes of the Corporation by preventing poor senior citizens from securing access to legal services attorneys and would work a hardship on a group of citizens whose only entree to the legal system is the use of these attorneys. The denial of essential public benefits to low-income senior citizens, due to their inability to enforce program regulations according to statutory direction, would be the ultimate, tragic outcome.

The Legal Services Corporation was created in 1974 for the express purpose of providing low-income Americans, who were otherwise shut off from legal assistance and who were denied the ability to enforce their rights, with access to the judicial system. Currently there are 34 million Americans living in poverty, and 46½ million with incomes at 125 percent of poverty (the current income eligibility level for Legal Services applicants). Because of limits on funding, the Corporation estimates that its attorneys are presently meeting only 15–20 percent of the legal needs of all those eligible, mostly by assisting with everday matters and by obtaining government benefits. In 1982, Legal Services attorneys handled about 1.1 million cases.

The elderly make up a significant portion of legal services clients. In 1982, Legal Services attorneys represented more than 150,000 persons over 60. It should be noted, however, that the unserved poor elderly population is also of significant size; there are presently 3.7 million elderly living in poverty and 6.1 million elderly living at 125 percent of poverty. The elderly poor have special legal needs in that they are often the beneficiaries of an assortment of public benefits, such as Social Security, Medicare and Supplemental Security Income, and need assistance in assuring that they receive what is due them. The complexity of Federal laws and agency procedures, aggravated by senior citizens' age, limits the ability of many elderly to be their own advocates. In addition, Legal Services attorneys aid senior citizens in a wide-range of everday matters, such as landlord-tenant conflicts, consumer problems, insurance issues, and health care needs.

One example of how Legal Services attorneys have assisted elderly clients in the recent past is in the area of disability benefits. For the past two years, nearly one million disability beneficiaries, including thousands over the age of 60, have been subjected to a review process by the Social Security Administration to determine whether they should continue to receive their benefits. Since March of 1981, 374,000 people have lost their benefits. Legal Services attorneys have been invaluable in the help they have given all low-income disability beneficiaries, including the elderly, in order to appeal benefit terminations. Our organization has received many heart-breaking letters from older people who have either lost their benefits or who have been called in for reviews. These people do not know what to do or who to turn to. For some, disability benefits in their only form of income. We generally suggest that they contact a legal services attorney for assistance.

Without the assistance of Legal Services attorneys, low-income elderly might be in worse economic straits than they already are. Yet it is estimated that if the proposed regulations are implemented, one-half to two-thirds of the elderly poor will be deprived of Legal Services. Clearly, they will be adversely affected by these proposed regulations.

Several sections of the proposed regulations would be especially harmful to the elderly. Among the most egregious:

Section 1611.6, Maximum Allowable Assets, attempts to establish an assets test for eligibility by limiting to $1,500 the value of liquid and non-liquid assets that all members of an applicant's household may have, and to $3,000 where one member of the household is over 60. The Legal Services Corporation Act itself provides no statutory authority for the Corporation to impose a national assets test, although it allows individual programs to do so. Consequently, the Corporation has no authority to mandate an assets test which programs must use in determining eligibility of clients.

Another aspect of the assets test would limit equity in a home to $15,000. This limitation would result in the denial of Legal Services to a number of poor elderly. Seventy percent of the elderly own their own homes, having purchased them years ago at low prices. After a period of rising home values, it is likely that the value of these homes has increased dramatically, although this does not necessarily mean that the elderly owner's income has also increased or that the owner has access to the increased equity. What it does mean is that poor elderly individuals, now owning homes worth more than the original purchase price, are house rich and cash poor and will be ineligible for Legal Services despite their reliance on government income maintenance and benefit programs to maintain a relatively decent standard of living.

In addition, the total cash value of IRA or Keogh plans would have to be considered in the assets test. This is clearly in contradiction to the intent of the law in creating IRAs and Keoghs, which was to encourage people to invest in these plans in order to provide additional income after retirement. If by investing in these plans the elderly are then at some point denied access to Legal Services, individuals may choose not to have these retirement plans and would thus be even more dependent on government benefit programs. Finally, the regulations propose that the assets of all members of the household be considered in applying the assets test. This means that almost all elderly people who live with others will not be able to obtain Legal Services. It also means that family members who have elderly relatives residing with them will be forced to pay those relatives legal expenses.

Clearly, the imposition of an assets test, especially the one proposed in these regulations, would have a devastating effect on the eligibility of persons whose assets exceed the stated maximums; this would, unfortunately, include the majority of the elderly.

Section 1611.5(c) Determination of Eligibility would, in effect, limit certain low-income groups' access to Legal Services attorneys by denying services to organizations whose main concern is working to benefit eligible low-income client groups. For example, the existing regulations allow Legal Services attorneys to represent organizations composed of friends and relatives of nursing home residents in order to protect and enhance the rights of the residents. The residents themselves are eligible for representation; however, because of physical and/or mental incapacity, they may be unable to take whatever actions are necessary to assert their legal rights. The advocacy organizations, formed for the express purpose of protecting the rights of the residents, can currently obtain Legal Assistance on behalf of the residents. The proposed regulations would no longer allow this practice and eligible client groups may be shut off from the legal system once again.

Section 1611.4, Authorized Exceptions eliminates the provision allowing government income maintenance program benefits to be disregarded in computing client

income. This provision was originally enacted based on the assumption that anyone poor enough to be receiving AFDC, Food Stamps, or SSI could not afford legal assistance; there is no reason to assume that this has changed. Income eligibility restrictions for these programs are already highly restrictive, so that it is inconsistent to presume, as the proposed rules do, that "a person receiving governmental income maintenance payments may have more disposable than one receiving income solely from employment . . ." Is it realistic to assume that an elderly person whose income might consist of some Social Security benefits and SSI, who receives health care through Medicaid and Medicare, who relies on food stamps for nutritious meals and who is dependent on housing assistance to maintain a roof over his head will have disposable income to pay a private attorney in order to appeal the termination of any of these benefits?

The availability of Legal Services to the poor has already been reduced by recent funding cutbacks to the Legal Services Corporation. As a clientele group, the elderly have in turn been affected; these regulations would further reduce the elderly poor's access to the judicial system. And, contrary to Reagan Administration beliefs, a recent ACLU study shows there is no truth to the pronouncements that the private bar would fill in the gaps by providing free legal services to the poor.

While the segment of society needing free legal assistance is growing, those services are constricting and it is becoming more and more evident that a tiered system exists in terms of access to the legal system in this country. The wealthy can easily afford lawyers and manipulate law to best serve their interest. Fewer middle-class citizens can afford adequate legal assistance, and until the establishment of Legal Services Corporation, the poor were totally shut out. This can hardly be characterized as "equal protection of the law," a basic tenet of the Constitution.

The elderly poor have for the past two and a-half years endured cutbacks in programs designed to provide them with minimally acceptable standard of living. Implementation of these regulations would not only deny them access to the legal system, but would also limit or render more difficult their access to programs providing food, housing, health care, and income. We urge that these regulations not be adopted.

Mr. BILIRAKIS. I have questions, of course. But in the interests of time, and time is a factor here, I will not ask them. I would tell these witnesses, those prior to them, and all subsequent ones, if you have any further points you would like to make, that you would like to call attention to, please submit them to the committee by Monday afternoon, this coming Monday afternoon.

If you can submit them to the committee by then, we will certainly place them in the record.

I might also add your full statements will be a part of the record. Thank you so very much. I really apologize so very much. The later witnesses just seem to never get the same fair shake, and so many have come from such a distance, but it is just one of those things.

Mr. CLAYMAN. It isn't a new problem with this committee.

Mr. BILIRAKIS. Yes, I am sure many of you are familiar with it.

Mr. CLAYMAN. Thank you.

Mr. BILIRAKIS. I would ask the witnesses with special categories of elderly, David Affeldt, David Raphael, and Alice Quinlan, to come forward.

Again I would say to you that your full statements will be made a part of the record and I would appreciate your cooperation if you would limit your summary to 2 to 3 minutes.

PANAL 4: SPECIAL CATEGORIES OF THE ELDERLY, CONSISTING OF DAVID AFFELDT, REPRESENTATIVE FOR NATIONAL PACIFIC/ASIAN RESOURCE CENTER ON AGING AND ASOCIACION NACIONAL PRO PERSONAS MAYORES; DAVID RAPHAEL, EXECUTIVE DIRECTOR, RURAL AMERICA; AND ALICE QUINLAN, GOVERNMENT RELATIONS DIRECTOR, OLDER WOMEN'S LEAGUE

STATEMENT OF DAVID AFFELDT

Mr. AFFELDT. Thank you very much, Congressman. I will summarize my statement.

In the case of the Hispanic elderly and the Pacific aged, they have a unique problem and that is language. This poses a formidable barrier, and complicates their legal problems in comparison with other groups.

Specifically, the two associations that I am representing today are concerned with four aspects of the proposed regulations.

First, counting the assets of household members. This measure is clearly antifamily, and it could be especially detrimental to older Hispanics and Pacific Asians who must live with relatives because their own resources are inadequate.

The unmistakable message is that the provision will discourage family members from helping their elderly parents or grandparents. Our laws and regulations should encourage family help instead of erecting roadblocks.

We believe that a far preferable standard is ability to afford legal services rather than residence.

Second, the home equity provision establishes a $15,000 ceiling. Older persons will be major victims of this provision because about 74 percent of elderly households are homeowners, and many of these individuals include the elderly poor, and have equity values exceeding $15,000 primarily because they purchased their homes years ago at a much lower price.

A much better rule, in our judgment, would be to exclude the value of a home and all contiguous land from countable assets. This policy is followed for SSI and that has worked well. It is premised on the notion that people who have worked hard all their lives should not be forced to part with their only major resource to qualify for SSI.

Low-income older persons should be able to live their final years in dignity and self-respect without the fear that their home, which has been acquired during a lifetime of work, will disqualify them for legal services.

We also have concern about the group representation provisions. We would like to see a retention of automatic eligibility for public assistance recipients.

In conclusion, the proposed regulations would make it markedly more difficult for older Americans, and particularly the minority aged, to obtain the legal representation that they need.

Legal assistance is an essential and effective linking service for older minorities and other elderly persons that can assist them in obtaining urgently needed services and income.

For these reasons, we urge the subcommittee to take the lead in deleting or making suitable modifications to the antifamily, antiel-

derly, and the new and unnecessary paperwork measures in the proposed regulations.

Thank you very much.

Mr. BILIRAKIS. Thank you, sir.

[The prepared statement of Mr. Affeldt follows:]

PREPARED STATEMENT OF DAVID A. AFFELDT, ASOCIACION NACIONAL PRO PERSONAS MAYORES, AND NATIONAL PACIFIC ASIAN RESOURCE CENTER ON AGING

Congressman Biaggi and Members of Subcommittee on Human Services, I welcome the opportunity to testify on behalf of the National Association for the Hispanic Elderly (Asociacion) and the National Pacific/Asian Resource Center on Aging (NP/ARCA).

NP/ARCA and the Asociacion commend you for holding this timely hearing on the Legal Services Corporation (LSC) proposed regulations governing legal services for the poor.

The Asociacion and NP/ARCA have been strong supporters of legal or paralegal services for elderly. Earlier congressional hearings have made it clear beyond any doubt that older Americans have been largely overlooked or ignored by the private bar. This is especially true for aged minorities and particularly elderly Pacific/Asians and Hispanics who oftentimes encounter another barrier: language. The harsh reality is that older Americans must oftentimes fend for themselves when a legal problem arises—whether it involves litigation, understanding the "technicalities" of federal programs, or just planning their personal affairs.

Most older Americans have had very little contact with government during their preretirement years, except perhaps to pay taxes or perform their military obligation. But upon reaching retirement age, they become increasingly dependent upon federal programs, such as Social Security, Supplemental Security Income, Medicare, Medicaid, food stamps, veterans' pensions, and others. Quite frequently, these programs are expressed in rather technical language which is not readily understandable by lay persons. Here again, older Hispanics and Pacific/Asians have an added dilemma, especially those who have limited English-speaking ability.

Consequently, legal services are particularly important for elderly Pacific/Asians, Hispanics and other older Americans, who rely upon federal programs for their day-to-day activities. But far too many aged minorities and other older Americans are denied access to our legal system. The vast majority of older Americans cannot afford to pay—at least for any sustained period of time—a private attorney. As a practical matter, the private bar is not that well versed on aging-related issues. Very few attorneys have had formal training in Social Security, SSI, Medicare, Medicaid or other programs impacting on the lives of the elderly. Moreover, issues in these program areas are not likely to yield high returns for lawyers, especially considering their expenditure of time on complex legal questions when the outcome is uncertain.

These facts underscore the need for a fair and effective legal services program which is fully responsive to the elderly's needs. The LSC-proposed regulations do not meet that test. Instead, the proposed rules would impose new burdens on the elderly and attorneys representing them.

The Coalition for Legal Services estimates that more than one-half and possibly two-thirds of the elderly poor will be deprived of legal services. We do not have figures concerning the impact on aged Hispanics or Pacific/Asians. However, it is clear that older Pacific/Asians and Hispanics would be adversely affected by the proposed regulations.

COUNTING ASSETS OF HOUSEHOLD MEMBERS

The proposed regulations would place a $3,000 asset ceiling for elderly households to be eligible for legal services. But, LSC would look at all the assets "of all members in the applicant's household." This measure is clearly anti-family and it could be especially detrimental to older Hispanics and Pacific/Asians who must live with relatives because their own resources are inadequate. The unmistakable message is the provision will discourage family members from helping their elderly parents or grandparents. Our laws and regulations should encourage family help, instead of erecting roadblocks. As a practical matter, this measure will mean that most older persons living with others will be denied legal services, except those residing with other indigents. We believe that a far preferable standard is ability to afford legal services, rather than residence.

HOME EQUITY EXCEEDING $15,000

Low-income elderly individuals would become ineligible for legal services under the proposed regulations if the equity value in their homes exceeds $15,000. Older persons will be major victims of this provision because about 70% of elderly households are homeowners. Many of these individuals, including the elderly poor, have equity values exceeding $15,000, primarily because they purchased their homes years ago at a much lower price.

Quite often, these individuals are in practically impossible situations. They cannot sell their homes since they cannot afford to rent another residence because rents have soared in recent years. Yet, they find it difficult to live in their homes because utility costs, repair bills and property taxes have leaped forward.

A much better rule, in our judgment, would be to exclude the value of a home and all contiguous land from countable assets. This policy is followed for SSI, and it has worked well. It is premised on the notion that people who have worked hard all their lives should not be forced to part with their only major resource to qualify for SSI. Low-income older persons should be able to live their final years in dignity and self-respect without the fear that their home, which has been acquired during a lifetime of work, will disqualify them for legal services.

GROUP REPRESENTATION

Group representation will also be severely limited under the proposed regulations. Currently, legal services attorneys can provide this representation if the group lacks and has no practical means of obtaining funds for private counsel. The current group representation language has enable legal services attorneys to provide effective counsel in isolated and impoverished rural areas where private lawyers typically are not found. Nursing home reform cases have also benefited from this provision.

LSC now wants to change this workable standard by limiting representation to groups composed primarily of eligible clients. This new standard will cause considerable paperwork to determine which group meets this "majority" test of eligible clients. And, it will cut back on the type of potential representation available for the elderly.

We urge, therefore, that the current standard be retained.

AUTOMATIC ELIGIBLILTY FOR PUBLIC ASSISTANCE RECIPIENTS

NP/ARCA and the Associaction also support the continuation of the present policy to permit legal services attorneys to represent clients receiving public assistance, such as SSI or food stamps. This provision, which has been in existence since 1976, was developed to minimize red tape and to improve administrative efficiency. It was premised on the finding that people who have adequate income for basic necessities—such as food, housing, and health care—are unable to afford legal services.

The attempt to eliminate this long-standing policy will necessitate increased red tape for older clients, paperwork for legal services attorneys, and administrative costs to determine financial ability.

CONCLUSION

In conclusion, the proposed LSC regulations would make it markedly more difficult for older Americans, and particularly the minority aged, to obtain the legal representation that they desperately need. Legal assistance is an essential and effective linking service for older minorities and other elderly persons. It can assist them in obtaining urgently needed services and income. For these reasons, we urge the Subcommittee to take the lead in deleting or making suitable modifications to the anti-elderly, anti-family, and new and unnecessary paperwork measures in the proposed regulations.

Mr. BILIRAKIS. Mr. Raphael.

STATEMENT OF DAVID RAPHAEL

Mr. RAPHAEL. I am Dave Raphael with Rural America. I am very delighted to be here and also to have the National Farmers Union join in in our statement.

Most of the items in our statement have already been said and said very well today, so I will not repeat them. I wanted to raise two points. One was the particular discrimination against rural people that are reflected in these regs. A disproportionate elderly in this country are rural residents and so proposed restrictions and asset limitations such as included in these have a disproportionate impact on particularly low-income rural elderly.

The second part of that is a group of constituents not talked about, low income and farm families in rural areas. These proposed regulations would have a very serious effect upon them. It has taken us many years basically to get the Legal Services Corporation and local legal services groups to recognize the needs of farm families, to become familiar with the farm issues and farm programs, and to find ways to represent them. The last couple of years has seen a terrific depression in agriculture. The need for good legal representation of low-income farmers to prevent the loss of their farms has been a real problem and the help has been there from the legal services program. These regs would negate much of that progress that has been made, would be very damaging, both the land acreage limitations and particularly the equipment and vehicle limitations. We think that the only asset test that would make sense in these cases would be income-producing assets, and we think that a simple income test would be sufficient and recommend that the proposed regulations be withdrawn.

Mr. BILIRAKIS. You are suggesting an income test for the elderly?

Mr. RAPHAEL. An eligibility test for legal services should be an income test and not an asset test. We cannot see how equity in a home or vehicles plays a role. Possibly income-producing assets would make some sense, but in that case you have simply an income test and if people meet the income criteria, that ought to be sufficient.

Mr. BILIRAKIS. Thank you.

[The prepared statement of David Raphael follows:]

PREPARED STATEMENT OF DAVID RAPHAEL, EXECUTIVE DIRECTOR, RURAL AMERICA ON BEHALF OF RURAL AMERICA AND THE NATIONAL FARMERS UNION

Chairman Biaggi and Members of the Subcommittee, my name is David Raphael and I am the Executive Director of RURAL AMERICA, a national membership organization representing people in small towns and rural areas and working with individuals and community groups at the local level. For more than fifteen years we have served as a national voice on behalf of the special needs of rural people, and promoted public policies that responded to those needs. We appreciate your invitation to appear today and comment on the proposed new eligibility regulations published by the Legal Services Corporation.

I am very pleased to be able to advise the Committee that the National Farmers Union joins our organization in expressing concern about these proposed new guidelines.

Because our organization has a special concern for low-income, minority and other disadvantaged rural citizens, the legal services program and the potential impact of these regulation on it is general interest to us. We also have a special interest in their impact on the rural elderly and on farmers. As you may know, with only one-fourth of the nation's households, nonmetropolitan areas have thirty percent of those headed by someone 65 or older and more than one-third of those elderly households which have incomes of less than $5,000 a year.[1]

[1] These figures are from the 1980 Annual Housing Survey, adjusted to current designations of metropolitan areas.

It will also be of interest to this committee to know that while those 65 and older make up only eleven percent of the total population, they account for more than sixteen percent of all farm operators. Moreover, they make up more than twenty percent of the operators of farms with sales less than $20,000 annually and for almost forty percent of such farms where farming is the operator's principal occupation.[2]

NEW ELIGIBILITY REG'S WOULD BE STEP BACKWARD FOR RURAL LEGAL SERVICES

The first point I would like to make about the proposed new eligibility regulations published in the August 29th *Federal Register* is that there is absolutely no demonstrated need for revision of the existing eligibility guidelines. In fact, the problem for rural areas has traditionally been one of securing access to an equitable share of legal services, not one of limiting or targeting eligibility. The service gaps have been generally greatest for small, limited resource farmers where there was frequently a lack of communication and understanding on both sides. For the most part, lower-income farmers were not familiar with the legal services program and frequently unaware of their eligibility or even need for assistance. Legal services attorneys, for their part, were rarely knowledgeable about farming issues and problems.

In the late 1970's, the legal services program as a whole began to make some progress on this problem of inadequate rural access. Studies reported on the special needs and obstacles in rural areas and additional efforts were made to overcome them. Moreover, one of the byproducts of the current farm crisis has been a growing awareness on the part of lower-income farmers that they both needed and were entitled to legal assistance and the development on the part of a number of legal service programs and attorneys of substantial expertise in farm problems and related case law. The proposed new guidelines would threaten to wipe out the progress that has been made toward rural equity and instead create new barriers between rural people and the legal services to which we believe they are entitled.

ASSET LIMITS WILL DISCRIMINATE AGAINST ELDERLY AND FARMERS

The introductiojn of a new set of asset limitations extending to nonliquid assets is of particular concern to uc, as it is to other. In the first place, this approach seems of dubious consistency with congressional intent since the basic legislation refers specifically to "liquid assets" in discussing possible eligibility factors. Secondly, it is inconsistent with the approach of many other federal human service programs such as food stamps, which excludes the home and surrounding property, farmland essential to self-employment, work-related equipment, and even a vehicle if used to produce income, in determining program eligibility. In the third place, here as elsewhere, the new regulations are completely inconsistent with the principles of local discretion and flexibility of which the current Administration normally says so much.

Finally, even if the exemptions being allowed were not too limited, the assets permitted in these regulations strike us as Scroogelike in their restrictiveness. I would point out that the maximum permissible in a household's assets (after the exemptions for certain nonliquid assets), amounts to less than six months of living expenses under the Bureau of Labor Statistics' lowest budget for a retired couple. That is not very much of a financial safety net.

Beyond this, our analysis of the available data indicates that the $15,000 limit on equity in a home will exclude virtually all elderly homeowners from legal assistance. In nonmetro areas, it should be emphasized, 70 percent of the elderly households with incomes of under $5,000 a year are homeowners![3] In fact, they make up 56 percent of all nonmetro owner households in that income range. The 1980 data—already three years old—showed that the median value of housing owned by nonmetro households with incomes of less than $5,000 was close to $28,000. When you add to this statistic the fact that no less than 70 percent of those homes were free and clear of a mortgage, it is obvious that few of the rural elderly will be eligible for services under the proposed new guidelines.

The available statistics on farm families indicate a similar situation. As of 1979, the average farm operator with net cash income (both farm and nonfarm) of no more than $5,000 reported a dwelling valued at $27,600.[4] Although the data do not

[2] These figures based on the 1978 Census of Agriculture, the most recent available.
[3] Again, from the 1980 Annual Housing Survey.
[4] Data from 1979 Farm Finance Survey.

indicate what portion of those homes were mortgaged and what portion were not, it is clear that a substantial number of lower-income farmers will be excluded by this aspect of the proposed new asset limitations alone.

Similarly, the proposed new limits on licensed vehicle ownership and work-related tools and equipment strike us as overly restrictive in general and virtually prohibitive as far as low-income farmers are concerned. Again, the available data show the average value of farm equipment owned by farm operators with less than $5,000 in net cash income to be $32,000.[5] One-third of that figure is accounted for by tractors and another twenty-four percent by cars and trucks. It is not clear from the proposed guidelines whether tractors are to be treated as vehicles or as other work-related equipment, but in either event, the combined limit of $14,500 being proposed looks absurd when compared to the reality of even small farm economics.

In our analysis of the published data available and in conversations with our field staff and with others familiar with small farm operations, we were unable to develop data indicating with any clarity the potential impact of the $30,000 limit on allowable farmland assets. I would urge the Committee, however, to press the Legal Service Corporation for the documentation of their assumption that this is a reasonable figure.

OTHER OBJECTIONABLE ASPECTS OF PROPOSED REG'S

The absolute cap (of 150 percent of regular income limit) on authorized exceptions, as proposed in 1611.4, is more restrictive than it looks when one thinks of such special circumstances as extreme medical expenses, heavy fixed debts and obligations, or special expenses related to age and/or infirmity. And it seems to assume bad faith on the part of local agencies making the judgements on eligibility—again, without any evidence that it is justified.

The rigid limitations on group representation being proposed also seem to us uncalled for and contrary to the principle of maximum coordination and cooperation among social service agencies, since it will preclude local legal service agencies from working with and on behalf of local community action and farmworker agencies or senior citizens councils.

We also object to the elimination of the present logical assumption that those eligible for other basic low-income programs are eligible for legal services assistance. As one attorney points out, "If these proposals become law, legal services lawyers would spend most of their time making offensive, alienating inquiries into the financial situations of people who have already been through the exhaustive, insulting process of establishing their eligibility for other benefit programs."

OVER-ALL IMPACT PERHAPS WORST ASPECT

Probably the worst aspect of the proposed new regulations is their potential impact over all. Instituting these quite complex and inflexible restrictions will constitute a barrier to service in and of themselves. They will tend to give the legal services program the stigma of a 'welfare' program which will deter many rural people—especially the elderly and farmers—despite their need and actual eligibility for assistance.

Those who are not turned off by this aspect will face the administrative redtape of eligibility determination—a further barrier to participation and a work overload for legal service agencies which will badly tax their already limited manpower resources. In fact, this aspect is likely to make it even harder to secure any expansion in the provision of 'pro bono' legal assistance from the private sector, though this is supposed to be a priority goal of the current program.

In sum, it seems to us that the only assets with which any sensible needs test should be concerned are income-producing assets—and if assets are in fact income-producing, a straightforward income income test will generally provide the necessary screening. These proposed new "guidelines" look to us suspiciously like an effort to administratively hamstring a program that the Congress has steadfastly refused to terminate. They should be withdrawn.

Thank you.

Mr. BILIRAKIS. Ms. Quinlan.

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[5] Ibid.

STATEMENT OF ALICE QUINLAN

Ms. QUINLAN. Thank you, Mr. Chairman. You have our full statement and I will pick out three points which I think are unique and have not been made.

The first is the extent to which legal services issues are women's issues, and I do not think that has been mentioned yet today. Women constitute two-thirds of all clients served by legal services programs, which is in fact a reflection of the extent to which poverty in this country has a female face. Among the 14 percent of legal services clients who are the elderly, the vast majority of them are women. That is not surprising, either, when you know that three-fourths of all the elderly poor are women and they constitute two-thirds to three-fourths of all the recipients of Government programs, which are most often the focus of legal services for the elderly. So anything that affects legal services both positively or negatively disproportionately impacts on women by definition.

The second point is, with regard to the assets test and home equity, that has been the object of a lot of comment here this afternoon and a number of witnesses have said that many or the majority of the homes in this country have values exceeding $15,000. I would point out that we have some data on this point from the Census Bureau which zeroes in on exactly what proportion of the houses in this country exceed that, and that is the table on the last page of our testimony where we have a distribution chart which shows that less than 4 percent of all the single-family, owner-occupied homes in the United States have values under $15,000. Ninety-six percent have values above that, and I think that is a figure that might be of some interest to you.

Finally, I want to use the opportunity here to say something about the impact of these proposed regulations on women under 65 because there is a direct relationship to certain circumstances in which midlife women are thrown into poverty. Poor middle-aged women soon become poor elderly women. I point in this regard to the fact that nearly a third of all legal services funded cases deal with family issues, and fully 25 percent of them involve such issues as divorce, custody and visitation rights, spouse abuse, spouse and child support issues. Lack of access to legal assistance certainly leads to inequitable resolution of these issues and a proposed regulation that assumes that both parties have equal access to the jointly held assets is simply absurd.

In the case of older women, who are often uniquely affected by the divorce settlement, it directly often affects what their retirement income will be. The long-time homemaker who is divorced in mid-life is often particularly disadvantaged not only because she has no credit history, often no income, few employment opportunities, but she is on average less apt to have had experience with the legal system than her spouse has, and yet if she needs a lawyer and does not have the money to pay for one, what she most needs is a lawyer who will get her an equitable settlement, yet the legal services lawyer must begin from the premise that she has access to the couple's jointly held assets.

A last point in this regard, there is an exclusion on this point, for persons residing in shelters for battered women and children,

and it is absurd. Certainly whoever wrote this had no sense whatever of the shelter system in this country and of the fact that most battered women do not have access to shelters. Most shelters have very strict time limits and in fact in order for the persons who are providing these services at shelters to get legal services for women, they are going to have to have them stay in the shelter. That will result in further overcrowding of the shelters in order to provide legal services for the women involved. We certainly urge you to do everything in your power to hasten withdrawal of these regulations.

Mr. BILIRAKIS. Well, again, there certainly are questions but I am not going to be able to ask them. Please feel free to submit any further points that you may care to make as long as you do it before Monday afternoon. They will become a part of the record and your full testimony will be a part of the record.

[The prepared statement of Alice Quinlan follows:]

PREPARED STATEMENT OF ALICE QUINLAN, GOVERNMENT RELATIONS DIRECTOR, OLDER WOMEN'S LEAGUE

Mr. Chairman, members of the subcommittee, I am Alice Quinlan, Government Relations Director of the Older Women's League the first national membership organization focused exclusively on the concerns of midlife and older women. The Older Women's League was formed following the White House Mini-Conference on Older Women in 1980, and now has more than 7,000 members and chartered chapters in 30 states. Through education, research and advocacy, we work for changes in public policy to eliminate the inequities women face in their later years.

We are grateful to you, Mr. Chairman, for calling this hearing to examine the implications for the elderly of the proposed Legal Services Corporation regulations. Access to legal assistance when needed, regardless of the ability to pay, is an issue of critical importance to all our citizens, including the elderly. It is the conclusion of the Older Women's League that the proposed regulations will greatly diminish that access; we believe they are ill-conceived, unnecessary, and should be withdrawn.

LEGAL SERVICES AS A WOMEN'S ISSUE

Obviously your interest is on the impact of the proposed regulations on the elderly. At the outset, however, we think it is important for members of this committee and Congress to consider the extent to which Legal Services issues are women's issues. Women constitute two-thirds of all clients served by LSC programs. This certainly reflects the intent of Congress that legal assistance be made available to poor persons who would otherwise be unable to afford it. Reflected also is the extent to which poverty has a female face in this country.

Above 14 percent of Legal Services clients are the elderly, again the vast majority of them, women. This is not surprising, either, when one reflects that 73 percent of the aged poor are women; 7 out of 10 elderly recipients of food stamps are women; 66 percent of all Supplemental Security Income (SSI) recipients and 73 percent of aged SSI recipients are women; three-forths of the public housing units occupied by the elderly are headed by women; two-thirds of all Medicaid recipients are women. Since most of the cases of older legal services program clients involve government benefits (Social Security, SSI, Medicare, and Medicaid), anything affecting LSC programs disproportionately involves women.

THE PROPOSED LSC REGULATIONS

The proposed regulations would greatly restrict eligibility for services provided through the Legal Services Corporation, both to individuals and to groups. LSC proposes to restrict eligibility for legal services, particularly by instituting extraordinary assets tests and by making untenable assumptions about access to household assets. We will comment briefly on both proposals.

The assets test: home equity

As members of this committee well know, current entitlement programs do not count the value of the home in determining whether a person is eligible for assist-

ance. Those programs include Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) and food stamps. Now the Legal Services Corporation proposes to exclude only $15,000 in equity held in a home. This provision will keep millions of older persons from eligibility for assistance from Legal Services programs.

Most older persons live in their own homes, and in the case of the elderly, most of those homes are paid for. Although the purchase price of many may not have been far from $15,000 when the mortgage papers were signed, inflation in the real estate market, particularly in the last ten years, has sent property values skyrocketing. Most people are aware that very few houses in the United States have current values below $15,000. Census Bureau figures from the Annual Housing Survey show just how few owner-occupied single-family homes would meet such criteria: about 1.6 million out of 43.3 million, or fewer than 4 percent (see accompanying chart). The median value of all such homes in 1981 was $55,300. The median value of homes headed by women over 65 living alone was $39,600.

There is implicit in such ludicrously low limits the assumption that persons living in homes valued at more than $15,000 necessarily have sufficient incomes to meet whatever needs they may have for legal services; and there is also implicit the belief that if they do not, they should sell their homes in order to be able to pay for a lawyer. But the paid-up home is not a liquid asset, and should not be looked upon as such. A mortgage-free home is ofter the only substantial asset a widow has. Must she mortgage this property up to the $15,000 limit in order to qualify for legal services? Social Security is the only significant source of income for most older women alone, whose median annual income is under $5,000. How can she expect to repay such a debt? Or is she simply disenfranchised, unable to pay for a lawyer, and unable to qualify for legal services?

Household assets: accessibility

Equally shortsighted is the proposal that the assets of the entire household be considered accessible to the person applying for legal services assistance. The majority of the elderly live in their own homes, and since women are more apt to be widowed than men (85 percent of surviving spouses are women), they account for more than 80 percent of the nearly 7.5 million elderly who live alone. As older persons become more frail, it is not unusual for them to seek other living arrangements in the community, such as living with adult children or siblings. Is the requirement that all household income be accessible to the person seeking legal aid a disguised form of "relative responsibility" that will increase tensions among family members and reduce the likelihood of this type of informal family care-giving? Similarly, family support systems may be adversely affected when the presence of an AFDC recipient in the household, for example, an adult daughter, puts pressure on the aged parent to pay for the legal assistance she needs.

Impact on women under age 65

Finally, Mr. Chairman, we cannot conclude our remarks without some attention to the impact these proposed regulations will have on women under 65. Nearly one-third of all LSC-funded cases deal with family issues. Fully 25 percent involve divorce, custody and visitation rights, spouse abuse, and spousal and child support. The rights of each party in a divorce are protected only to the extent that they have equal access to legal representation; inaccessibility of affordable legal assistance leads to inequitable resolution of these issues. All too often, divorce has disastrous economic consequences for women, and the result is poverty, a poverty that extends into old age.

The older woman is often uniquely affected by a divorce settlement in which property division is directly linked to her retirement income. The longtime homemaker divorced in midlife is also particularly disadvantaged. She may have no credit history, no income, few employment opportunities, and no prospects of recovering the earning capacity she lost as a homemaker. What she needs most is a lawyer who will help her get an equitable settlement. Yet under the proposed regulations, the legal services lawyer must begin from the premise that she has access to the couple's jointly-held assets. How can she demonstrate his salary is not accessible to her? Even in community property states, there is no division of assets until the divorce.

The proposed regulations make a concession to "persons residing in shelters for battered women and children." As long as they are residing in the shelter, jointly held assets will be considered inaccessible, and would therefore not be a barrier to eligibility for LSC services. Little understanding of the function of shelters in conveyed by this section of the proposed regulations. Most battered women don't have

access to shelters, most shelters have strict time limits, unually set at two to three weeks' stay, and most women who leave shelters may still be in need of legal help which they don't have money to pay for. If these regulations are allowed to take effect, the result will be further overcrowding of scarce shelter space, and no legal assistance to women staying at safe harbor houses, informal alternatives in rural and other areas that cannot afford shelters.

CONCLUSION

There are many questions raised by the publication of these proposed LSC regulations. The most basic is: why are they needed? Is there evidence of abuse, overuse by persons who should not have received services? We think the stated motivation, a desire to focus limited resources on those most in need, is belied by the high administrative cost of verifying the new eligibility standards. The money and staff time that will be expended in such verification could much better be spent on the legal needs of the persons seeking service.

In cases where local programs are overwhelmed by persons in need of help, the option of increasing eligibility standards is already present. If there is such a crush of poor persons seeking legal assistance that such drastic changes as those proposed must be put in place, the appropriate remedy is to increase the funding to meet the need. Without assess to legal services programs, poor people have no opportunity to make our system of justice work for them. The Older Women's League urges you to do everything in your power to hasten the withdrawal of these proposed regulations.

Number and Current Value of Single Family Homes, 1981

Current value of home:	*Number of homes (owner-occupied, single-family)*
Under $10,000	[1] 746,000
$10,000 to $12,499	512,000
$12,500 to $14,999	[1] 351,000
$15,000 to $19,999	1,305,000
$20,000 to $24,999	1,644,000
$25,000 to $29,999	2,188,000
$30,000 to $34,999	2,673,000
$35,000 to $39,999	3,149,000
$40,000 to $49,999	6,314,000
$50,000 to $59,999	5,263,000
$60,000 to $74,999	6,826,000
$75,000 to $99,999	6,266,000
$100,000 to $124,999	2,486,000
$125,000 to $149,999	1,296,000
$150,000 to $199,999	1,265,000
$200,000 to $249,999	500,000
$250,000 to $299,999	226,000
$300,000 and up	282,000
Total	43,293,000

[1] 1,609,000 homes with values under $15,000; 3.7 percent of all such homes.

Note.—Median value of all owner-occupied single-family homes for the U.S. $55,300.

Source: Current Housing Reports: Annual Housing Survey 1981, Series H-150-81: Financial Characteristics of the Housing Inventory, Part C, U.S. and Regions. Table A-1, page 3.

Mr. BILIRAKIS. Mr. Marshall, representing the disabled community.

PANEL 5: DISABLED COMMUNITY, CONSISTING OF J. SCOTT MARSHALL, DIRECTOR OF GOVERNMENTAL AFFAIRS, AMERICAN COUNCIL OF THE BLIND; ROBERT PLOTKIN, MEMBER, LEGAL RIGHTS COMMITTEE, NATIONAL MENTAL HEALTH ASSOCIATION; AND DON GALLOWAY, DIRECTOR, D.C. SERVICES FOR INDEPENDENT LIVING

STATEMENT OF J. SCOTT MARSHALL

Mr. MARSHALL. Thank you, Mr. Chairman.

The American Council of the Blind is the largest organization of blind and visually impaired people in the country. We are particularly pleased to be here today because we share this concern with respect to quality of legal services with these many elderly groups that have testified previously.

I have submitted my statement for the record, but I would like to just briefly outline a couple major points. As a membership organization we get thousands of calls each year on our 800 number from blind people inquiring about their rights and asking for legal assistance with respect to disability issues. These range from the person who has been fired from employment because of deteriorating eyesight, the person who has been denied social security benefits because the Social Security Administration failed to apply the special rules for disability which apply to blind persons, and much, much more. There are about 30 laws, Federal laws, and numerous State and local laws dealing with the rights of disabled people, and there are many people that need advice concerning these matters. The private bar cannot possibly support this demand, and in a real sense the legal services offices in each community are the only resource that we could refer these people to when legal assistance is needed.

Turning to these regulations, the gross income ceiling of 150 percent of the maximum eligibility amount would greatly reduce the number of people eligible for service. This is because many blind and elderly persons have extraordinary expenses, medical expenses or employment-related expenses. When I first started practicing law in 1976, Mr. Chairman, I spent about $5,000 for reader services. I was fortunate to have a job whose income could support that kind of an expenditure until I was able to prove to my employer that I could do a good job, but many blind people are not so fortunate. Thus we disagree with the statement in the preamble of the regulations that very few people earning above the 150-percent income ceiling are in fact poor. Also, Mr. Chairman, we cannot believe that an individual who has become eligible for SSI who the Government has decided needs help with medical expense can also now afford a private lawyer if legal assistance is necessary.

Finally, Mr. Chairman, we also believe that we have not heard any evidence today that the existing eligibility rules are not working. We have heard only that there is not enough money to go around. It is my recollection that even prior to 1982, when all the cuts came into effect, legal services programs locally had to make hard choices about who they were going to serve. Our question is why cannot these hard choices still remain with those local programs?

Thank you very much for your time. It is a privilege to have been asked to testify.

Mr. BILIRAKIS. Thank you, Mr. Marshal. I certainly appreciate your patience and tolerance in waiting so long. I helped to work my way through law school by being a reader to a fine blind gentleman who became a judge later in Jacksonville, Fla., so I have great respect for your talents.

Mr. MARSHALL. Thank you very much. It was only through the efforts of people like yourself to provide that kind of assistance that I got through law school.

Mr. BILIRAKIS. Thank you. Your statement and the statement of Mr. Plotkin and Mr. Galloway will be made a part of the record. Thank you very much for coming.

[The prepared statements of J. Scott Marshall, Robert Plotkin, and Don Galloway follow:]

PREPARED STATEMENT OF J. SCOTT MARSHALL, DIRECTOR OF GOVERNMENTAL AFFAIRS, AMERICAN COUNCIL OF THE BLIND

The American Council of the Blind is the nation's largest membership organization of blind and visually impaired people. Our members come from all walks of life, from all income brackets, and from all parts of the country. For over 20 years we have been working to improve the quality of life for blind and visually impaired people by opening doors to educational, employment and social opportunities.

Handicapped and elderly people will bear the brunt of the tightened eligibility standards proposed by the Legal Services Corporation in its August 29, 1983, proposed rule.[1] The U.S. Census Bureau has just released this shocking statistic: 26 percent of disabled working age people have incomes below the poverty level—a rate 2½ times that of other working people.[2] Unemployment rates among handicapped people are currently estimated to be between 50 and 75 percent even though in only a small percentage of cases is the inability to perform a regular, full-time job the reason a handicapped person is not employed.[3]

But beyond the fact that a disproportionate number of potential clients of legal services programs are disabled, these cuts appear to be particularly aimed at making disabled and elderly people less likely to be eligible for services from local legal services programs. This is unconscionable given the specific statement of congressional intent that legal services programs should establish priorities which take into account the "needs of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped people.)"[4]

CEILING ON INCOME

Currently, local legal services programs may—and often do—deduct from a client's gross income medical and work expenses before making the determination of whether the family's income is below the maximum income limit of 125 percent of the poverty level (currently $12,375 per year for a family of four).[5] This allows legal services programs to be responsive to truly needy people who are living in poverty because of high medical, disability, or employment related expenses.

The proposed rule would place a cap of 150 percent of the maximum income level on gross family income—thus allowing only a certain amount of these allowable expenses to be deducted from the family's income to determine if the family's net income is under the maximum annual income level. It is not difficult to imagine that this arbitrary ceiling on gross income will lead to inequitable results in some cases. People with disabilities or illnesses may use up a large portion of their income for payment of medical bills or expenses for readers, attendants, special

[1] 48 FR 39086.

[2] Labor Force Status and Other Characteristics of Persons with Work Disability, 1982 (Series P-23, No. 127, United States Census Bureau). See also; "Physical Disability and Public Policy," Scientific American, Vol. 248, No. 6, June 1983, p. 42.

[3] President's Committee on Employment of the Handicapped, quoted in Handicapped Rights and Regulations, Vol. 4, No. 7 (Apr. 5, 1983), p. 49.

[4] 42 U.S.C. Section 2996f(a)(2)(c), 1977.

[5] 48 FR 19028, April 27, 1983.

equipment and transportation that enable them to work or live independently. These people would be ineligible for services from a local legal services program even though they are actually "unable to afford adequate legal counsel" and though they have "special difficulties of access to legal services and special legal problems." We therefore believe that the preamble to the proposed regulation is clearly wrong when it states that: "Although a few people with higher incomes might reasonably be considered to have some legal need, based on unusual circumstances, none of them would be likely to have need comparable to that of an ordinary poverty income client. Consequently, this absolute ceiling will not work injustice and will serve as a safeguard against expenditure of funds for representation of persons who are not defined as poor."[6]

On the contrary, the absolute ceiling on income will in some instances undermine Congress' intent that high quality legal assistance be made available to indigent people with special needs.

LIMIT ON EQUITY VALUE IN HOME

People between the ages of 55 and 65 are ten times more likely than people between the ages of 18 and 34 to have a severe disability.[7] These people are likely to be already established in their community and to have been paying on the mortgage on their home for years before the onset of their disability. These individuals often must stop working at least while they receive rehabilitation services. If they need legal services during this period before they can find gainful employment, they will be ineligible for legal assistance even though they would be unable to afford the services of a private attorney.

This ceiling on equity value of a home imposes stricter eligibility standards for legal services than for government income maintenance and needs-based programs such as SSI, Food Stamps and Medicaid. The proposed rule contains no justification for imposing a limit on the value of a home nor does this proposal state a rationale for choosing this particular equity limit. Again here, an arbitrary curb on eligibility is being imposed on local programs with no showing that it is necessary or that it will insure that indigent people in need of legal services will receive them.

ELIMINATION OF PERMISSION TO REPRESENT RECIPIENTS OF GOVERNMENT INCOME MAINTENANCE BENEFITS

One of the most frustrating problems faced by low income blind and visually impaired people who wish to apply for or retain income maintenance benefits is that they must complete seemingly endless forms and supply extensive documentation to prove that they meet the eligibility standard. Currently legal services programs are permitted to serve people who qualify for government assistance based on need, such as SSI, Food Stamps and Medicaid, without an additional inquiry into their income level. When this regulation was made it was correctly assumed that families who are unable to obtain adequate food, shelter or medical care without government assistance are also unable to afford to pay for the services of legal counsel when they are necessary.

The new proposal would no longer allow local legal assistance programs to choose to assume that recipients of benefits under these programs for poor Americans are eligible for services. The proposal would require potential clients who have already documented their eligibility for these other need-based programs to submit to still another eligibility determination procedure to document their financial need for legal assistance. Valuable resources, desperately needed for client services, would be diverted to paper work and to analyzing eligibility.

Furthermore, some blind people who receive SSI may have incomes slightly above the maximum income ceiling for legal services. For example, the SSI program has built into it work incentives for blind people who meet the other eligibility standards. For every two dollars of earned income, one dollar is deducted from the claimant's SSI benefits until the benefit amount reaches zero. Thus, blind people attempting to work their way off welfare could be ineligible for the services of legal assistance attorneys during this period. Private attorneys who are willing to represent low income clients with disability-related legal problems are not available in sufficient numbers to meet the demand. Even if they were, most attorneys in their practice do not gain the expertise necessary to practice within this particularly technical, complex area of law. Assistance from legal services attorneys is necessary.

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[6] 48 FR 39086.

[7] "Accommodating the Spectrum of Individual Abilities," United States Commission on Civil Rights, Clearinghouse Publication 81, September 1983, p.14.

LEGAL NEEDS OF INDIGENT, BLIND AND VISUALLY IMPAIRED PEOPLE

The American Council of the Blind—which incidentally received no federal funds—has first-hand knowledge about the extent of the need blind and visually impaired people have for free legal services. We provide information, advice, and assistance to blind and visually impaired people from across the country who call us on our toll-free telephone line. Our staff hears from thousands of people each year who need information about their rights and who face legal problems connected with their disability. Many problems can be handled by providing the blind or visually impaired individual with information or advice about the process to use to solve the problem without direct legal assistance. However, frequently people have legal problems which can only be solved by legal representation. We often refer these blind and visually impaired people to their local legal services office.

Who are these people that we refer to legal assistance attorneys? They are the newly blind people who are denied SSI because either their eye condition is unique and its severity is not understood by disability determination units or because Social Security has failed to apply special, technical rules which apply only to blind claimants to their cases. They are people seeking employment opportunities who have been subjected to discrimination on the basis of handicap. They are people whose vision has decreased and who have been fired by their employers because the employer has no understanding that blind and visually impaired workers can be productive. They are people with guide dogs who are not allowed to rent apartments, eat in restaurants, or to ride the bus. They are people who are being terminated from Social Security Disability Benefits as the result of Social Security's continuing disability investigation process. They are parents of multiply handicapped blind and visually impaired children who need advice about Medicaid or special eduation.

The representation provided by legal services attorneys to these people can and does make an enormous difference. Nearly 30 federal laws contain provisions which prohibit discrimination on the basis of handicap in the administration of a federal program. Numerous state and local laws also exist to insure equal opportunity for handicapped children and adults. Congress has seen fit to establish programs for the rehabilitation and independent living of blind, visually impaired and other handicapped people. For low income people who are also disabled the promise of these laws will remain unfulfilled if they do not have access to legal services.

NO NECESSITY FOR THE RULE

Local legal services programs already have the authority to set income guidelines below the existing regulation's maximum income limits and already adopt guidelines which allocate their limited funds to those families and individuals in the local community who are most in need of assistance. Even prior to the major reduction in funds for legal services programs which became effective in fiscal year 1982, local programs were faced with far more potential clients than they could ever serve and had to determine which indigent clients and which legal needs to meet. The stated rationale for lowering income and asset ceilings in the proposed regulation is that the "lack of increase in Corporation appropriations has prompted a reexamination of eligibility criteria so as to focus resources on those most in need."[8] Absent evidence that local legal services offices are not using the discretion granted by the current rule to focus resources on truly needy clients, there is no need to required lower income and asset limits.

CONCLUSION

In 1977 Congress amended the Legal Services Corporation Act to require the Corporation to insure that local legal services programs: "adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account relative needs of eligible clients . . . including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals); * * *"[9]

The proposed new regulations of the Legal Services Corporation undermine the implementation of this specific congressional mandate. Rather than overcome the "special difficulties with access to legal services" of the elderly and handicapped

[8] 48 FR 39086.
[9] 42 U.S.C., Section 2996f(a)(2)(c), 1977.

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this proposal would erect new barriers to services. We therefore urge that it be withdrawn and that the current regulations remain in effect.

PREPARED STATEMENT OF ROBERT PLOTKIN, ESQ., ON BEHALF OF NATIONAL MENTAL HEALTH ASSOCIATION, ASSOCIATION FOR RETARDED CITIZENS

My name is Robert Plotkin. I am currently an attorney with the firm of Perito, Duerk, Carlson & Pinco in Washington, D.C. Formerly I was Chief of the Special Litigation Section of the Civil Rights Division of the U.S. Justice Department, with specific responsibility for civil rights litigation on behalf of elderly and disabled persons. As a member of the National Legal Rights Committee of the National Mental Health Association, I am speaking today on behalf of the National Mental Health Association and the Association for Retarded Citizens.

The National Mental Helath Association is a nationwide, voluntary, non-governmental organization dedicated to the promotion of mental health, the prevention of mental illness, and improved treatment and access to services for the mentally ill. Our local 600 Chapters and state-wide Divisions and more than one million citizen volunteers work toward these goals through a wide range of activities in reasearch, eduation, public information and advocacy.

The Association for Retarded Citizens is a voluntary organization of over 200,000 members. Approximately half of their membership are parents of mentally retarded people. Through organizations in 49 states and their 1800 local affiliates, the Association provides direct services to and promotes the welfare of mentally retarded children and adults.

To state it briefly at the outset, in our comments we will ask that the Legal Services Corporation withdraw the proposed elegibility regulations. We urge Congress to do the same.

Advocacy for the mentally ill and the mentally retarded is a broad concept that covers many different kinds of efforts to secure better services for and to protect the rights of mentally handicapped individuals. Within this broad definition of advocacy, the need for and the significance of legal counsel as a means of ensuring equal access to justice is a cornerstone of the American judicial system.[1] The President's Commission on Mental Health (1978) also recognized that the need for accessible, appropriate legal counsel was magnified in matters involving the mentally disabled, whether relating to institutionalization and its potential consequences or other problems that occur due to the stigma attached to mental illness or special needs of the mentally disabled.

Access to legal counsel for the mentally disabled varies from state to state. Congress, recognizing further need, enacted the Developmentally Disabled Assistance and Bill of Rights Act and the Mental Health Systems Act (repealed with the exception of the Bill of Rights). Congress also specifically recognized a need for aggressive legal representation to enforce the rights of institutionalized mentally ill and mentally retarded individuals by its passage of Public Law 96-247 "Civil Rights for Institutionalized Persons Act" in May of 1980. In the Report of the Senate Judiciary Committee concerning the 1978 version of the Senate bill, the Committee states: "The proliferation of federal law and constitutional doctrine guaranteeing certain basic rights to institutionalized persons has done nothing to overcome their inherent inability to secure enforcement of those rights."

Citing various reasons, the Committee went on to state that a major factor impeding the ability of such persons to secure protection of their rights is a lack of money. "Most institutionalized persons are poor; many are indigent; none possesses the resources necessary to finance litigation challenging systematic institution-wide abuse."[2]

The President's Commission on Mental Health clearly recognized the Legal Services Corporation as a necessary partner in the provision of legal services, however, recognizing that the mentally disabled were an underserved population in the Legal Services System. Since that time the corporation has funded the Mental Health Law Project as national back-up center to Legal Services attorneys representing clients on mental disability-specific issues.

The President's Commission went on to note that individual as well as class action representation should be available and supported free legal advocacy services

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[1] Task Panel Reports Submitted to the President's Commission on Mental Health; Report of the Task Panel on Legal and Ethical Issues, Vol. 4 appendix, Feb. 15, 1978 p. 1366.
[2] Ibid, p. 1369.

to indigent persons (while not expressing an opinion on whether a means test should be invoked.)[3]

The Legal Services mandate, as expressed in the Legal Services Corporation Act, is that the Corporation's fundamental purpose is "to provide high-quality legal assistance for those who would be otherwise unable to afford adequate legal counsel." (Section 1001). We would suggest that while not all of the poor are mentally disabled, many of the mentally disabled people living in communities are poor by any standard. 30 percent of SSI (Supplemental Security Income) recipients are mentally disabled and 11 percent of SSDI (Social Security Disability Insurance) are mentally disabled. Many others exist on public assistance, food stamps and other local health and welfare programs. Poor mentally disabled individuals have some of the same legal needs as other poor and "not poor" individuals, such as: divorce and custody issues; landlord/tenant problems; and other needs. Mentally disabled individuals also may require a variety of psychiatric, medical, social and rehabilitative services due to their disability. In the past, providing these services was relatively simple because most of the severely disabled mentally ill or mentally retarded were admitted to state hospitals and other facilities where they remained indefinitely; thus virtually assuring all of these services could be arranged within a single setting.[4] With the advent of deinstitutionalization and community care and placement, mentally disabled individuals and their families are faced with an array of bureaucracies to be mastered to insure that necessary life support services are available. Unfortunately, getting food, housing, and health care through public systems is often difficult and MHA and ARC advocates have found that often it is necessary not only to have someone advocate or "speak on behalf of" an individual, but also it is necessary to involve lawyers to insure that systems designed to benefit the public respond in an appropriate way to the mentally disabled. It has often been our experience that the mentally ill and the mentally retarded, by nature of their very illiness or disability, are often unable to speak up for themselves. Also, they may have special needs (such as the need to fend off well-meaning but inappropriate institutionalization) that require legal attention. It is certainly clear to us that more lawyers need be available to more mentally disabled people and not the other way around.

Despite this, on August 29, 1983, the Legal Services Corporation proposed new regulations concerning the eligibility of poor people for services which will, we believe, arbitrarily eliminate millions of poor people from representation and greatly complicate administrative procedures, adding to administrative expense.

For the last two years the Administration has sought to kill the Legal Services Corporation, but Congress has prevented it. The Administration has been successful, however, in significantly reducing appropriations. Now it is attempting to reduce the number of eligible persons by changing the regulations. One reason given for this attempt is the lack of sufficient funding to meet the needs of the poor as previously defined. The solution proposed by the Administration, it appears, is not to increase funding, but to decrease eligibility. The next step will be to seek further funding reduction on the grounds that the population in need has been reduced. Catch 22. The cruel effect of this policy will not be limited to the mentally disabled. We would also state that the proposed changes in the regulations are not the result of any Congressional demand or of any statutory change. There have been none such. We do not believe that the Legal Services Corporation has made a case as to why these regulations are necessary.

Although this Administration takes pride in its efforts to reduce bureaucracy and paper work and to cut costs, the net effect of these changes, in addition to depriving a great number of the poor of needed legal services, will be to increase the cost of determining whether a person is entitled to legal services. The money available for services—already out—will be further reduced by the necessity of paying the increased regulatory costs.

Although this Administration prides itself on its concept of "new federalism," these new regulations would provide for prioritizing funding at the national level rather than recognizing that the prioritization should happen at the local level; (i.e. that the local program should determine, under tight funding, how to limit their client case load.)

We will focus the remainder of our comments, in the time allowed, on two issues: the issue of group representation and the issue of determination of individual eligibility, especially for disabled persons.

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[3]Civil Rights of Institutionalized Persons, Report of the Committee on the Judiciary, U.S. Senate on S 1393, U.S. Government Printing Office, 1978., p. 17.

[4]Annual Report of the National Council on the Handicapped, Topic 7: Alternative Living Arrangements for Persons with Mental Impairments, March 1982 p. 89.

Under the new regulations the LSC will be forbidden to represent a group which is not primarily composed of persons eligible for legal assistance, but which, in fact, has been organized to or whose primary purpose is to assist low income persons. This change reflects the inability or unwillingness of this Administration to recognize the necessity and propriety of supporting people who will help the poor. One of the sad consequences of being poor—and certainly of being mentally disabled—is the great difficulty of self-representation. To deny to those unable to help themselves the assistance of others is to effectively cut off assistance.

The Mental Health Association of Minnesota, an affiliate of our national organization, became increasingly aware in late 1981 and early 1982 of a devastating problem with the termination of Social Security disability benefits for the mentally disabled. For example, Catherine Mooney contacted the Minnesota MHA looking for help. Through investigating, the MHA advocates found that Ms. Mooney had been declared employable by a Social Security doctor even though she had hallucinated throughout the examination, and even though the report said her "difficulty with hallucinations" is not helped by medication. Her Social Security disability benefits were terminated and she was forced to return to the psychiatric ward of a local hospital for subsistence. Ms. Hilda Christenson also came to their attention. Ms. Christensen is mildly mentally retarded with what is diagnosed as "persistent paranoid personality pattern." She worked as a food handler and home health aide, but was fired from every job. The local rehabilitation center evaluated her as not employable. Social Security officials, however, ignoring the overlay of mental illness on her mid-60s IQ, found that because she could dress herself and understand simple directions, she was not disabled. Her benefits were terminated and she has since been existing on state general assistance money.

Outraged at the failure of the Social Security system to amend its procedures, with legal services lawyers the state MHA brought the *Mental Health Association of Minnesota et. al. v. Schweiker* to stop the inappropriate termination of Social Security disability benefits to these individuals and other mentally disabled persons similarly situated. It is doubtful that such a case could have been brought without the assistance of legal services attorneys. This would have meant that the Social Security Administration would have continued denying or terminating benefits on perfunctory reviews with insufficient attention to medical or vocation factors that indicate and inability to maintain substantial gainful employment. The loss of benefits has caused a tremendous strain on the mentally disabled and their families and denial of initial applications for SSI by chronically mentally disabled persons in institutions results in many being forced to remain in institutions results in many being forced to remain in institutional settings when they could better function in their communities.

The Mental Health Association of southeastern Pennsylvania has been deluged with such requests for help from mentally ill individuals and their families. For instance, Mr. Merrit Reish came to them for help. Mr. Reish is 37 years of age, and chronically mentally ill. He has previously been hospitalized at a state psychiatric facility for 2 years. He has no work history to speak of an lives with his mother. He was participating in community programs and doing quite well until his SSDI benefits were quite suddenly terminated. The Association referred him to legal services who represented him to an appeal of the termination. As happens in 66 percent of the cases, his benefits were restored by an independent Administrative Law Judge. Representation by a lawyer at that appeal was critical to its success.

The MHA of Southeastern Pennsylvania is contemplating an action like that taken by MHA of Minnesota to force SSA to halt these arbitrary terminations and to amend their procedures, rather than having each individual go through a lengthy appeal only to see the majority regain their appropriate benefits.

Under the proposed regulations Mental Health Associations and Associations for Retarded Citizens would not be eligible for such group representation unless a majority of their actual membership were eligible clients. Advocacy organizations who speak out on behalf of those who may not be able to speak out for themselves would be prevented from obtaining representation by legal services programs. This would greatly impede efforts by these local programs, who are traditionally not well funded, from bringing such issues before the courts. We believe that, especially as it relates to mental disability, this change in current policy should not be tolerated.

Secondly, the new regulations, we believe, could mean that many mentally disabled individuals could be deemed no longer eligible for legal services.

The proposals would fundamentally alter the current procedures under which eligibility is determined. For the first time, programs will be required to review in detail the assets of a poor person to determine eligibility. Of particular harm to the elderly and to the unemployed, under the proposed regulations, a person who has

an equity greater than $15,000 in his or her home is automatically denied eligibility. Many of the elderly poor have held their homes for long enough to increase in home values in the last ten years. Such persons may be practically unable to support themselves; yet if they have an equity in their home of more than $15,000, they may not receive needed legal aid. HHS attempted to place a comparable ceiling on home equity in the case of SSI recipients. As a result people were forced to give up their homes in order to receive SSI or attempt to survive without income. Faced with that situation, Congress amended the statute to require that the total value of the home and all contiguous land be excluded in determining eligibility. Thus, clear Congressional intent is contrary to the Administration efforts in connection with the Legal Services Corporation.

Another eligibility limitation will have a particularly serious effect on the mentally disabled. The new regulations require that assests in excess of $1,500 per household ($3,000 of a household member is age 60 or over) be considered in determining available assets. This necessarily will have a chilling effect on the ability and willingness of families to allow the mentally disabled and other poor family members to share their home. Alternatively it will deny necessary legal services to those poor people who do live with families.

These regulations also make household income a criterion of eligibility. If this criterion becomes a major factor in the detemination of eligibility, many mentally ill and mentally retarded individuals living with their families will become ineligible for legal services. This particular provision would have a devastating impact if, in addition, "total household income" can be interpreted to mean the sum of the incomes of individual residents in a group home. It is realistic to believe that such an interpretation could be made as our experience in the Food Stamps program proved. Prior to a 1979 change in the law, the sum of the income of group home residents was added together to figure "total household income" for purposes of individual eligibility of group home residents. When confronted with the effects of that provision, Congress clarified that each individual resident's income should be considered separately to determine individual eligibility.

How big might this problem be? A recent GAO study on group homes for the mentally disabled stated that in 1980 there were an estimated 6,500 group homes serving mentally disabled persons in metropolitan areas alone.[5] This figure includes homes for the mentally ill and mentally retarded. The study stated that almost all group homes derived portions of their operating funds from clients' SSI and other federal entitlements and that state assistance and client's personal income aside from SSI were also common funding sources. With similar data ARC estimates that of the 6 million mentally retarded indivuduals in the U.S.: "175,000 are in institutions; 60,000 are in group homes (6,000 group homes); and the remainder of the 6 million mentally retarded citizens live with the families."

Similar data as to the mentally ill is provided by the National Plan for the Chronically Mentally Ill.[6] Of the approximately 20 million Americans suffering from some form of mental illness, 2.4 million are chronically mentally ill. Of those 2.4 million, 900,000 are in institutions (either hospitals or nursing homes) and 690,000 are in various residences in the community.

There is currently no breakdown as to residence in group homes or residence with families. We believe that, as in the case of the mentally retarded, the majority of the chronically mentally ill reside with their families. In either situation, taking a combined income of parents and the disabled individual will often result in a determination of ineligibility. For instance, we can look at the case of a retarded adult that lives in the family home. If a 40 year old Downs syndrome adult is cared for by his natural parents (rather than in a costly institution), the elderly, retired parents are likely to have an income consisting of retirement benefits and Social Security benefits for each parent. Add to that the SSI benefit for the retarded adult and chances are that they have exceeded the income limits proposed under these regulations. Although their income is above the standard, they may not, in reality, have adequate monies to provide a lawyer for their son should be come to require one.

Are all residents of group homes for the mentally disabled to be denied legal services on the basis that their added income exceeds the limit? Since it is noted by the GAO study that most group homes retain a portion of their operating expenses from

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[5] Report by the United States General Accounting Office, "An Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled." GAO/HRD-83-14, Aug. 17, 1983, p. 1.

[6] "Toward A National Plan for the Chronically Mentally Ill," Report to the Secretary by the Department of Health and Human Services, Steering Committee on the Chronically Mentally Ill. DHHS (ADM) 81-1077, December 1980, p. 2-10.

clients' federal program or entitlement benefits, it can be assumed that most of the residents have been recognized by the government as poor and unable to meet their basic needs. Out of these small entitlements, then, these regulations would require all of these residents to pay for their own legal services should they require such services. It certainly does not follow that all of their individual monies are shared or pooled and thus available to all, as somehow seems to be indicated by the fact that LSC would arrive at a total household figure.

In summary, we believe the following: (1) the LSC has failed to make a case as to why these regulations are necessary; (2) there has been no Congressional demand or statutory change to indicate a need for these regulations; (3) the LSC should not be instituting major policy changes during this time of controversy surrounding the LSC; and, (4) these regulations will be clearly detrimental to poor mentally ill and mentally retarded citizens. These regulations should be withdrawn.

Thank you. I would be happy to answer any questions.

PREPARED STATEMENT OF DON GALLOWAY, DIRECTOR, D.C. SERVICES FOR INDEPENDENT LIVING, INC.

The District of Columbia Services for Independent Living, Inc. is a nonprofit organization which provides supportive services to disabled people that allow us to live independently in our home and in the community. We serve the most severely disabled citizens of the District of Columbia, and have found that there are many barriers to independent living for us.

One of these barriers is the new proposed client eligibility regulations introduced by the Legal Services Corporation. These proposed regulations negate some of the real independent living aspirations of our participants.

ELIGIBILITY CRITERIA

Many of our participants would not qualify for legal services under the proposed regulations because of the vehicles which they are forced to use. Vehicles with hydraulic wheelchair lifts and/or hand controls far exceed the $4,500 equity ceiling for eligibility. These vehicles are necessary for medical- and job-related transportation.

In addition, if a severely disabled person over the age of 55 has more than $15,000 equity in their home, they are also denied access to affordable legal services. Many of these homes were initially purchased at a lower cost; however, due to the inflated housing market, our disabled homeowners are faced with a dilemma—to sell their accessible homes or do without legal services. Indeed, if the home is sold, the income from such a sale would last only a few years. Thus, the disabled person is put into the position of having to find accessible, affordable housing or having to live with family and/or friends. One of the creative methods used by our staff to encourage accessible, affordable housing by our participants is to share housing. The income of the entire household would then be considered and again, no legal services would be available to our disabled brothers and sisters.

ELIMINATION OF PERMISSION TO REPRESENT CLIENTS OF GOVERNMENT INCOME MAINTENANCE PROGRAMS

The additional burden to make available all financial records to the Legal Services Corporation would create another cost for severely disabled citizens. A quadriplegic, a blind person, a deaf person or a mentally retarded person would have to get an attendant, a reader, an interpreter and/or a driver to assist him or her with the process of completing the additional application.

In addition to the burden placed on the disabled individual, the Legal Services Corporation would then be in the business of acting as an eligibility determination unit.

CONCLUSION

I strongly recommend that the original regulations be used, and that the new proposed regulations be viewed as yet another attempt by the Reagan Administration to erode the progress the poor have made in the last ten years.

Mr. BILIRAKIS. The hearing is adjourned.

[Whereupon, at 5:10 p.m., the hearing was adjourned.]

APPENDIX

TESTIMONY OF NEW YORK CITY COUNCIL PRESIDENT CAROL BELLAMY

Chairman Biaggi, Members of the Committee, I am Carol Bellamy, President of the New York City Council. I am submitting this testimony to express my strong objection and opposition to the Legal Services Corporation's proposed changes in its eligibility requirements. See 48 Fed. Reg. 39,986 et. seq. (August 29, 1983).

The proposed regulations will deprive countless thousands of poor New Yorkers, including many elderly poor, handicapped individuals, battered women and unemployed persons, from access to the American legal system. There can be little doubt as to the consequences of loss of access. For the poor, the ability to contest the denial of welfare assistance, the rejection of a Medicare claim, or the receipt of an eviction notice, can literally mean the difference between having adequate food, health care and shelter and doing without.

The avowed purpose of the proposed regulations is "a reexamination of eligibility criteria so as to focus resources on those most in need." But instead of carving with a scapel in an attempt to isolate legitimate cost-saving measures, the regulations indiscriminately apply the butcher's knife, thereby cutting off from legal assistance scores of currently eligible poor persons. This is particularly unconscionable in light of the Administration's repeated efforts to reduce and dismantle the federal aid programs that have provided—in the Administration's own words—a "safety net" for the poor.

One of the most pernicious and insensitive provisions of the proposed regulations is Section 1611.6 which adopts an assets test to determine legal services eligibility. Under this test legal services programs would no longer automatically be able to represent clients receiving benefits from governmental income maintenance programs. This means that even though clients in need of legal assistance have already qualified for AFDC, SSI or food stamps—all of which are means tested programs—they must still subject their personal finances to yet another layer of bureaucratic scrutiny. To make matters worse, the criteria used to determine legal services eligibility are in some instances stricter than the criteria used for income maintenance programs. The proposed regulations could thus lead to an absurd and heartless result; individuals eligible or potentially eligible for government assistance to pay for food, shelter or clothing may be required to pay for their own legal services.

The proposed regulations also fail to provide realistic guidelines for assessing an individuals' assets. They require legal services programs to consider individuals' liquid and non-liquid assets in determining their eligibility. The maximum allowable assets are limited to $1,500 per household, or in the case of a household with two or more members, one of whom is 60 or over, $3,000 in assets. These ceilings are far too low when considered in light of the limited exclusions provided for in the proposed regulations.

For instance, Section 1611.6(c)(1) only excludes from consideration of an individual's assets $15,000 equity in a home. Limiting the homeownership exclusion to $15,000 ignores the fact that many elderly and unemployed individuals pruchased homes years ago at lower prices. One study, based on the 1977 Annual Housing Survey, found that 42 percent of the elderly homeowners receiving public assistance had an equity value in excess of $15,000. Given inflation in home values, this figure is undoubtedly substantially higher today. The $15,000 home equity cap is especially burdensome on New York's elderly and unemployed. Property values here make it virtually certain that a homeowner, no matter how meager his income or other assets, will not be eligible for legal services.

The provisions relating to the exclusion of assets are deficient in two other respects. First, the regulations place a $4,500 equity cap on the ownership of one or more licensed vehicles. This provision penalizes the handicapped who often need specially equipped automobiles to live productive lives. Second, the provisions relat-

ing to calculating the assets of battered women will create insurmountable barriers to eligibility for the vast majority of such women. The jointly held assets of a battered woman and her abusive husband will be considered inaccessible to her only if she is residing in a shelter. Given the reality of limited shelter space as well as the reasonable desire of some battered women to live with friends or on their own, there is simply no logic to this rule.

The proposed regulation's limits on maximum allowable assets are not only unrealistic, but violate the explicit terms of the Legal Services Corporation Act. The Act authorizes local programs to consider "liquid assets" in determining eligibility; it specifically does not authorize the consideration of non-liquid assets or resources. The obvious reason for this exclusion is that Congress did not believe that poor persons should be required to sell their home or car in order to qualify for legal services.

Apart from the provisions restricting the eligibility of individual clients, I oppose the proposed changes relating to group representation. While the current regulations permit representation of groups who lack funds and whose primary purpose is to further the interests of eligible clients, the proposed regulations limit representation to groups primarily composed of eligible clients. This restriction is nothing more than a transparent ploy designed to undermine the effectiveness of the many advocacy organizations devoted to helping the poor obtain benefits to which they are lawfully entitled. Far from serving the mandate of the Legal Services Corporation—to assist in improving opportunities of low-income persons—it will deprive the poor of some of their strongest allies. As a local elected official, I can attest to the need for advocacy groups representing the interests of the poor. Without them government would fail to address adequately the interests of vulnerable constituencies.

I am also concerned that the proposed regulations will hamper the provision of legal services to the poor by burying federally funded lawyers in a mass of unnecessary paperwork. The imposition of an assets test will require staff to spend substantial time soliciting and verifying information regarding clients' financial eligibility. This enormous burden cannot be justified in the absence of any reliable and impartial data demonstrating that there is a need to ensure that LSC funded services are not being provided to individuals who can afford to obtain private counsel.

The federal government's involvement in the promulgation of eligibility criteria for LSC funded programs is not only misguided from a policy standpoint, but also appears contrary to the letter and spirit of the Legal Services Corporation Act. Section 2(B) of that Act gives each local program "flexibility to develop its own eligibility standards so as to assure the best use of its resources and maximum service to those most in need." See S. Rep. 93-495, 93rd Cong., 1st Sess., 14 (November 9, 1973). The proposed regulations take this power away from the local programs. They require that needy individuals be denied legal services if they have income in excess of 150 percent of the poverty guidelines, irrespective of whether extraordinary expenses in fact make individuals unable to pay for legal services.

They impose on programs maximum asset limits which apply nationally and, consequently, take no notice of the cost of living or property values in various parts of the country. In short, the proposed regulations impose federal standards on what Congress intended to be essentially a local decision. That an Administration ostensibly dedicated to deregulation would propose such a step is extraordinary.

As one reads through the proposed LSC eligibility requirements, it becomes apparent that what really is at issue is the concept of government funded legal services. It is difficult not to view the regulations as yet another attempt by the Administration to dismantle the legal services program. Having failed to limit the access of the poor to legal services through the budget reauthorization process, the regulations attempt to do by indirection what could not be accomplished directly. One would hope and expect that the debate on such a critical issue as legal services to the poor would be more openly conducted.

The Administration's unrelenting crusade to abolish legal services is a grave mistake. We are a society committed to the principle of the rule of law. We cannot hope to make good on that promise if we deliver legal protections only to those who can afford to pay. In short, without government funded legal services we commit ourselves to a two tiered system of justice wholly at odds with our democratic ideals.

NATIONAL SOCIAL SCIENCE & LAW CENTER, INC

NSS&LC

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September 27, 1983

Mr. Mario Biaggi, Chairman
Select Committee on Aging
U. S. House of Representatives
716 House Office Building, Annex 1
Washington, D. C. 20515

Dear Mr. Biaggi:

I am enclosing a memorandum our staff prepared on the impact of the proposed Legal Services regulations on the current eligible client population. Several of these proposed regulations will have the result of eliminating large numbers of the elderly poor from Legal Services eligibility. See, for example, comments on pages 1, 4, 5, and 7 of the enclosed statement.

The restriction on home equity of over $15,000 would have a particularly strong impact on the elderly population. Estimates of the numbers of elderly poor who would be eliminated from each state's eligible population due to this proposed restriction are listed on the enclosed computer printout.

If we may be of any additional assistance to the Committee, please do not hesitate to contact me. Thank you for your interest in the work of the Center.

Sincerely,

Leonard H. Goodman

Enclosures: Summary of Comments on Proposed Eligibility Changes
State Estimates of Populations Eliminated from Eligibility

Sept. 23, 1983

Summary

Impact of major proposed regulations on families and individuals in poverty:

- Over three million of the households below poverty will be eliminated from eligibility by the restriction on home equity of over $15,000. This means that almost ten million people will be directly affected by the loss of Legal Services.

- The home equity restriction will be especially harsh on the elderly poor population. Over a third of elderly individuals now qualified for Legal Services will be eliminated from eligibility.

- 404,568 poverty-level farm households will be in danger of losing eligibility by the provision that those with farm property valued at over $30,000 be eliminated. This means that 1,072,105 people in farm households will not have access to Legal Services.

- The restriction on automobile ownership to vehicles valued at under $4,500 will mean that almost 9 million poverty-level households will be questioned about the valuation of their cars. Assuming that one-quarter of the cars are valued at over $4,500, over two million households will no longer be eligible for Legal Services assistance. In 706,000 of eliminated households, the car is used to get to the place of employment.

- Over 2 million people are in households which qualify for Food Stamps and unemployment benefits, and which have incomes over 100% of the poverty line. Over a million people are above poverty and receiving Supplemental Security income payments and Food Stamps. These people may be eliminated from eligibility.

- Forty percent of the elderly in poverty receive privately-sponsored pensions or income from interest or rent; they will be eliminated from eligibility. This represents 1,400,000 elderly persons living below the poverty income level. The poverty level is now $4,860 for a person living alone.

- The proposed changes in eligibility regulations would have a disproportionately harsh impact on female-headed households, children, the aged, and racial minorities, since these groups make up large proportions of the current poverty population.

To: Select Committee on Aging, U. S. House of Representatives
Mario Biaggi, Chairman

From: National Social Science and Law Center
Washington, D. C.

Date: September 26, 1983

Subject: Comments on Proposed Rule: 45 CFR Part 1611, Fed. Reg. 48:168, 8.29.83.

These comments on specific sections of the proposed rule estimate the impact the proposed criteria would have on the current eligible poverty population. Estimates are based on the number of households and persons below the Federal Poverty Guidelines, and, where appropriate, the number of persons above the income level who would be affected by the loss of Legal Services. In most instances, the national population totals for 100% of poverty are used as bases for the estimates of numbers excluded by the proposed rule. Use of other bases are noted. Where available, figures for 125% of poverty are also shown.

It is important to note that, unless otherwise stated, the estimates below refer to that part of the population which now is eligible for Legal Services. The poverty income guidelines for 1983 are as follows:

Size of House or Family Unit:		100% Level	125% Level
	1 person	$4,860	$6,075
	2	6,540	8,175
	3	8,220	10,275
	4	9,900	12,375

All data sources used were official governmental documents. Standard estimating and extrapolation techniques were used for subgroups not shown in detail in published sources. Proportions found in older publications were applied to the current poverty count estimates, adjusted for inflation or demographic changes, as noted. Government data sources are listed below. Estimates of the 1982 poverty population are based on data from the March, 1983 Current Population Survey.

Background:

National data on the size and characteristics of the poverty population are found in Census documents and Current Population Survey reports. These are the only national estimates which use similar income definitions of poverty level, applying them to family or household size. Other studies include information on the characteristics of low-income families, households, or persons, but many definitions of low-income are not directly equatable to poverty levels (because the poverty definition is adjusted by size of household or family unit); thus, many studies which contain valuable information on low-income groups are not useful for comparative purposes.

The Current Population Survey results are based on a smaller sample than that used in the income section of the Census; therefore, state adjustments based on the CPS are not available. The figures used below are based on national CPS totals. Poverty population totals for recent years are as follows:

Selected Characteristics of Persons and Families Below Poverty, 1981-1982

	1982*		1981	
	Number	Rate	Number	Rate
Total Persons:	34,398,000	15.0	31,822,000	14.0
Family Status				
Persons in families:	27,349,000	13.6	24,850,000	12.5
Householder	7,512,000	12.2	6,851,000	11.2
Children under 18	13,139,000	21.3	12,068,000	19.5
Other members	6,698,000	8.7	5,931,000	7.8
Unrelated subfamilies	591,000	52.8	482,000	53.4
Unrelated individuals	6,458,000	23.1	6,490,000	23.4
Residence:				
Nonfarm	33,160,000	14.8	30,562,000	13.8
Farm	1,238,000	22.1	1,260,000	23.0
Employment				
Worked during year	9,119,000	7.8	8,631,000	7.3
Had some unemployment	3,710,000	17.3	3,258,000	16.8
Age				
59 and under	29,454,000		26,818,000	14.0
60 and over	4,944,000		5,004,000	14.0
65 and over	3,751,000	14.6	3,853,000	15.3
72 and over	2,337,000		2,404,000	17.9

*The poverty threshold for a family of four was $9,862 at the time these figures were published. Poverty rates refer to the proportion of the total population with the characteristic which is below 100% of poverty income.

See: B, p.4; D, p.65-66.

A. Section 1611.6 (c)(1): Homeownership equity of over $15,000

Summary: Over three million households below poverty will be eliminated by this provision, and over 9 million individuals in the poverty population will be directly affected by the loss of legal services. This provision will have an even harsher impact on the elderly poor--almost two-thirds of the elderly live in owner-occupied homes. 45% of poor households, and 62% of elderly poor households, are owner-occuped.

The Annual Housing Survey for 1981 reported that 88% of housing units owned by low-income individuals were valued at over $15,000 (the rate for all income groups is 96%). In addition, 66.3 of housing units owned by low-income individuals had no monthly mortgage. This asset test for eligibility, therefore, would result in the exclusions shown below.

5,590,00 workers below the poverty line will be unemployed for some period of time during the year. This equals half (51%) of all workers below poverty who either worked or looked for work. It is especially important to note that almost 800,000 households below poverty have workers who are likely to face severe employment problems.

In low-income households, both with and without mortgages, homeownership costs (taxes, insurance, water and sewer fees, and mortgages where applicable) consume a larger proportion of household income than is true for households not in poverty.

Housing Characteristics of the Poverty Population, 1981-1982

	1982		1981	
	100%	125%	100%	125%
Households:	12,980,000	17,961,000	11,676,000	16,538,000
Owner-occupied:	5,893,000	8,675,000	5,305,000	7,984,000
Total Persons:	34,398,000	46,520,000	30,940,000	42,821,000
in owner-occupied housing:	15,616,000	22,468,000	13,597,000	20,192,000
Householder 65 and over:	3,531,000	5,622,000	3,185,000	5,175,000
in owner-occupied housing:	2,221,000	3,598,000	2,002,000	3,311,000

See: C, Table 1; B, Table B. Estimates for 1982 figures were derived from 1981 proportions, with the exception of total number of persons below poverty (published in the March 1983 CPS report.) Average number of people per household = 2.65.

Households Below Poverty Affected by Homeownership Assets Test, 1982

	Value over $15,000	
All Households:	5,186,000	
Subtotal with equity:*		3,422,654
Persons in Same Households:	13,743,000	
Subtotal with equity:		9,070,033
Householders over Age 65:	1,954,000	
Subtotal with equity:		1,290,000

*It is assumed that households not having a mortgage payment exceed the equity test, since these houses are valued over $15,000.

Source: Annual Housing Survey: Financial Characteristics of the Housing Inventory, 1981. Value tabulations apply to one-unit structures on less than 10 acres, having no commercial establishment on the property. Owner-occupied cooperatives, condominiums, mobile homes, and trailers are excluded.

Proportion of Household Units Paying Over 25% of Income for Housing

Type of Unit	All Units	Low-Income Units
With mortgages	26%	71%
Without mortgages	15%	33%

See: J, p.3-4.

Unemployment and Homeownership

9,119,000	Persons below poverty who worked
10,999,000	Persons employed and unable to find work
391,000	Unemployed: 1 - 4 weeks
840,000	5 - 14 weeks
1,075,000	15 - 26 weeks
1,404,000	27 weeks or more
1,880,000	No employment found for year
5,590,000	Total below poverty of active labor force with unemployment, or 51% of those who worked or looked for work.

15,616,000	Persons below poverty living in owner-occupied homes
.554	Proportion aged 15-64
8,651,000	Persons aged 15-64, in owner-occupied homes
.48	Proportion of this age group who worked or looked for work
4,152,000	Total persons
.51	Proportion facing employment problems
2,118,000	Persons experiencing unemployment
2.65	Persons per household
799,000	Households with persons experiencing unemployment

B. Section 1611.6(c)(4): Value of farmland over $30,000

Summary: This provision would affect 467,169 farm households, or 1,238,000 persons in the poverty population. Over four-fifths (86.6%) of farms are valued at over $30,000. 404,568 farm households would be excluded from eligibility, affecting 1,072,105 persons.

Source for estimate:

Of those below 100% of poverty 33,160,000 are living in non-farm areas, and 1,238,000 in farm areas.

1,238,000	Individuals in poverty living on farm areas in 1982.
2.65	No. persons per household
467,169	Total farm households
.866	Proportion valued over $30,000
404,568	Number of households excluded by asset test.
2.65	Number of persons in these households.
1,072,105	Total persons excluded

See: N, Table 34, p. 86. 7.4% of all farms were valued below $20,000; 12.0% valued between $20,000 and $39,999. This latter group of farm valuations was divided in half to derive the estimate above.

C. Section 1611.6(c)(3): Automobile equity of over $4,500

Summary: Nine million of the 13 million households below poverty will be affected by this regulation. Over two million households are estimated to be eliminated from eligibility due to the value of their cars.

In over 2 and 1/2 million of households below poverty, the car is used to get to the place of employment--706,000 of these households will be eliminated due to this restriction on automobiles.

In addition, more than six million people reported that they have a public transportation disability, that is, they are unable to use public transportation due to physical disability. 58% of these are over 65 years of age. This criterion for eligibility would be particularly important to these two populations.

Sources for estimate:

12,980,000	Households below poverty
.69	Proportion of low-income households having at least one car (income under $10,000)
8,956,000	Households with automobiles, estimated .25 over value
2,239,000	Households eliminated
9,119,000	Persons below poverty who worked
.82	Proportion of all workers who use car in journey to work
7,478,000	Workers below poverty using car for employment
2.65	Persons per household
2,822,000	Households using car for employment
706,000	Households eliminated from eligibility

See: A, p. 22; F, p. 14; I, Table 1097; and O, Table 2.

D. Section 1611.6 (a)(1): Pension investments

Summary: This change in regulations would affect 1,168,000 (9%) households below poverty, or 3,783,000 (11%) persons.

Source for estimate:

Households with pensions: 1981

206,000	Households with person covered by private pension
852,000	Households having union or employer-sponsored pensions
1,058,000	Total households in 1981 (9% of all households below poverty)
1,168,000	Total households in 1982 (estimated)

Persons represented: 1981

436,000	Persons in households with private pensions
3,244,000	Persons having union or employer pensions
3,680,000	Total persons in 1981 (11% of all persons below poverty)
3,783,000	Total persons in 1982 (estimated)

These figures refer to households and persons receiving these payments, not specifically to those individuals who have invested in IRA's or Keogh plans but have not reached retirement age. The Dept. of Treasury, Office of Tax Policy, stated that approximately 199,000 tax returns with adjusted gross incomes under $10,000 declared purchase of IRA accounts on 1981 returns.

See: C, pp. 93-96.

E. Section 1611.6: Receipt of Other Sources of Income:

Over 5 million families below the poverty line receive income from sources other than earnings. This is also the case for 4,859,000 unrelated individuals below poverty. These families and individuals may lose their eligibility for Legal Services assistance.

This is especially likely to happen for families and individuals who receive more than the poverty income, but less than 125% of the poverty level--four million families and almost seven million individuals have incomes between 100% and 125% of the poverty level.

For 1,270,000 people over 65 and below the poverty line, these other sources of income may mean they will lose eligibility for Legal Services assistance. (D,p.66)

Among these same individuals, 42% live with other family or non-family members. (See D, p.65-66). This means that over 1.4 million elderly persons may have eligibility removed if the resources of others in their households are counted.

Types of income for poverty families, individuals, and those over 65 are as follows:

Below Poverty Level

	Families	Unrelated Individuals
Total	6,851,000	6,490,000
Income Sources:		
Earnings	4,172,000	2,322,000
Other income	5,446,000	4,929,000
Soc.Security	1,407,000	2,714,000
Pub. Assistance	2,357,000	429,000
SSI	608,000	1,045,000
Other transfer	888,000	570,000
Div., interest, rent	1,638,000	2,018,000
Priv.pensions, govt. pensions,annuities	1,117,000	717,000

Source: D, p.132,134

29-115 O—84——7

	Persons 65 or older
Total:	3,853,000
Income Sources:	
Social Security only	1,246,000
SSI only	158,000
Both only	619,000
Social Security and other payments(not including earnings)	1,270,000

See: D, p.66.

F. Section 1611.4: Receipt of Public Benefits for those below and above poverty:

Families qualifying for non-cash or cash benefits, but having incomes above 100% of the official poverty line, are likely to lose eligibility for legal assistance. Figures for the three major benefit programs are shown below.

	Total Households Receiving	Households Below Poverty	Households Above Poverty
Food Stamps	7,115,000	4,801,000	2,314,000
AFDC	4,110,000	2,705,000	1,405,000
Supplemental Security Income	2,984,000	1,605,000	1,379,000

Approximately 2 million households above poverty, or over 4 million people, are likely to be eliminated from eligibility. Although these families are above the income guidelines for Legal Services eligibility, substantial numbers are obviously in need of support. For example, of those families above 100% of the poverty line:

853,000 families, or 3,344,000 people receive Food Stamps and AFDC payments.

285,000 families, or 1,145,000 people receive unemployment benefits and AFDC.

617,000 families, or 2,244,000 people, receive unemployment benefits and Food Stamps.

See: C, p. 93,96.

Households Above 100% of Poverty

Receive:	Food Stamps	AFDC	SSI	Unemploy.	Priv. Pensions
Food Stamps	2,314	853	336	617	92
AFDC		1,405	146	285	68
Supp.Sec.Income			1,379	103	67
Unemployment				7,269	309
Private Pensions					6,168

Persons Above 100% of Poverty

Receive:	Food Stamps	AFDC	SSI	Unemployment	Priv. Pensions
Food Stamps	8,060	3,344	1,024	2,244	293
AFDC		5,638	577	1,145	291
Supp.Sec. Income			3,970	422	191
Unemployment				23,494	962
Priv. Pensions					13,087

A substantial number of the households which are above 100% of the poverty line and qualified for benefits are headed by women or elderly. Over 2 million female-headed households receive both Food Stamps and AFDC; 360,000 of these are above the poverty line. 123,000 of households headed by individuals over age 65 qualify for both Food Stamps and Supplemental Security Income and are over 100% of poverty.

The average number of months households receive Food Stamps is 8.9, and the average monthly value of the stamps is $74.

Sources:

A. Household and Family Characteristics: March, 1981
Series P-20, No. 371

B. Money Income and Poverty Status of Families and Persons in the United States: 1982 (Advance Data from the March 1983 Current Population Survey)
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C. Characteristics of Households and Persons Receiving Selected Noncash Benefits: 1981
Series P-60, No. 136

D. Characteristics of the Population Below the Poverty Level: 1981
Series P-60, No. 138

E. Social and Economic Characteristics of the Older Population: 1978
Series P-23, No. 85

F. Provisional Estimates of Social, Economic, and Housing Characteristics: 1980
PHC80-S1-1

G. Money Income of Households, Families, and Persons in the United States: 1981
Series P-60, No. 137

H. Statistical Abstract of the United States: 1982-1983

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Department of Housing and Urban Development, and Bureau of the Census
Series H-150-78

K. 1980 Handbook of Agricultural Charts
U.S. Department of Agriculture, Handbook No. 574

L. How Well are We Housed? Report 5: Rural
U. S. Department of Housing and Urban Development, 1979

M. Digest of Data on Persons with Disabilities
U. S. Department of Health, Education and Welfare, and Congressional Research Service

N. 1978 Census of Agriculture: Vol. 1, Summary and State Data
U.S. Dept. of Commerce, July, 1981.

O. The Journey to Work: 1979.
Series P-23, No. 122.

P. Nationwide Personal Transportation Study: Automobile Ownership
Federal Highway Administration, U.S. Department of Transportation, Dec., 1974

Q. 1977 Nationwide Personal Transportation Study: Household Vechicle Ownership
Federal Highway Administration, U.S. Department of Transportation, Dec., 1980

R. 1979 Statistical Yearbook
U. S. Dept. of Housing and Urban Development

STATE ELIGIBILITY ESTIMATES

The figures on the following table represent the numbers of persons who will be considered ineligible for legal assistance as a result of the proposed regulation changes that limit home equity to $15,000.

These figures were derived as follows.

Total Persons

Step 1--Total number of persons living below 100% of the poverty level was obtained from the 1980 Census for each state's and the District of Columbia.[1]

Step 2--The proportion that each state represents of the total poverty population was computed by dividing each State's total poverty population by the United States total poverty population (for example, the Alabama figures are 719,765/27,382,739 = .02629).

Step 3--The proportions obtained in step 2 were applied to the 1982 total poverty population of 34,398,000[2] in order to obtain the total number of low income persons for each state. (For Alabama; .02629 x 34,398,000 = 904,164)

Step 4--These figures were then multiplied by .439, which represents the proportion of persons below poverty who lived in owner occupied housing units in 1981.[3]

Step 5--These totals were multiplied by .58. .58 is a derivative of the proportion of persons with incomes under $10,000 who lived in owner-occupied housing units valued over $15,000 (88%), multiplied by the proportion of low income persons living in owner-occupied housing units with no mortgage payment (66%) in 1981.[4]

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[1]1980 Census of Population: General Social and Economic Characteristics PC80-1C Series. All state reports were not available at time of calculation. However individual state and United States figures were available in unpublished form from the Census Bureau-Poverty Statistics Division.

[2]Current Population Report. Money Income and Poverty Status of Families and Person in the United States: 1982 (Advance Data From the March 1983 Current Population Survey), Table B, p. 4.

[3]Current Population Reports. Characteristics of Households and Persons Receiving Selected Non Cash Benefit: 1981, Table 1, pp. 11-12.

[4]Current Housing Reports. Annual Housing Survey: 1981, Part C Financial Characteristics of the Housing Inventory. Table A-1, p. 3.

Persons Age 65 years and over

Step 6--The 1982 poverty figures (step 3) were multiplied by .109 which is the proportion that the low-income elderly are of the total poverty population for 1982[5]

Step 7--Number of elderly persons living in owner occupied units was derived by multiplying figures obtain from step 6 by .63. In 1981, 63 percent of householders age 65 years and over lived in owner occupied housing units.[6]

Step 8--The elderly population that will be affected was estimated by multiplying figures from step 7 by .58 (refer to details in step 5).

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5 [2]Current Population Report. Money Income and Poverty Status of Families and Person in the United States: 1982 (Advance Data From the March 1983 Current Population Survey), Table B, p. 4.

[6]Current Population Reports. Characteristics of Households and Persons Receiving Selected Non Cash Benefit: 1981, Table 1, p.10.

Number of Persons Affected by Proposed LSC Home Equity Regulation Changes, by State, 1982

Region	Total Population			Elderly Population		
	Below Poverty Line	In Owner Occupied Housing	Affected by LSC Proposal	Below Poverty Line	In Owner Occupied Housing	Affected by LSC Proposal
Boston						
CONNECTICUT	304757	133788	77597	33219	20928	12138
MAINE	177118	77755	45098	19306	12163	7054
MASSACHUSETTS	668870	293634	170308	72907	45931	26640
NEW HAMPSHIRE	94668	41559	24104	10319	6501	3770
RHODE ISLAND	118031	51815	30053	12865	8105	4701
VERMONT	74176	32563	18887	8085	5094	2954
Regional Total	1437620	631115	366047	156701	98721	57258
New York[a]						
NEW YORK	2887850	1267766	735304	314776	198309	115019
Regional Total	2887850	1267766	735304	314776	198309	115019
Philadelphia						
DELAWARE	85870	37697	21864	9360	5897	3420
DISTRICT OF COLUMBIA	142397	62512	36257	15521	9778	5671
MARYLAND	508170	223087	129390	55391	34896	20240
NEW JERSEY	866066	380203	220518	94401	59473	34494
PENNSYLVANIA	1519755	667172	386960	165653	104362	60530
Regional Total	3122257	1370671	794989	340326	214405	124355
Northern Virginia						
MICHIGAN	1188200	521620	302540	129514	81594	47332
OHIO	1367925	600519	348301	149104	93935	54483
VIRGINIA	766786	336619	195239	83580	52655	30540
WEST VIRGINIA	360236	158144	91723	39266	24737	14348
Regional Total	3683147	1616902	937803	401463	252922	146695

Chicago						
ILLINOIS	1545788	678601	393589	168491	106149	61567
INDIANA	648434	284663	165104	70679	44528	25826
IOWA	359257	157714	91474	39159	24670	14309
KANSAS	291859	127775	74109	31725	19987	11592
MINNESOTA	471017	206776	119930	51341	32345	18760
MISSOURI	731421	321094	186234	79725	50227	29131
NEBRASKA	204997	89994	52196	22345	14077	8165
NORTH DAKOTA	99637	43741	25370	10860	6842	3968
SOUTH DAKOTA	141622	62172	36060	15437	9725	5641
WISCONSIN	499661	219351	127224	54483	34312	19901
Regional Total	4992893	2191880	1271290	544225	342862	198860
ALABAMA	904164	396928	230218	98554	62089	36012
ARKANSAS	532063	233576	135474	57995	36537	21190
FLORIDA	1614828	708910	411168	176016	110890	64316
KENTUCKY	1107686	486274	282039	120738	76065	44118
LOUISIANA	959697	421307	244358	104607	65903	38223
MISSISSIPPI	737658	323832	187822	80405	50655	29380
NORTH CAROLINA	1053805	462620	268320	114865	72365	41977
SOUTH CAROLINA	627561	275499	159790	68404	43095	24995
TENNESSEE	924871	406018	235491	100811	63511	36836
Regional Total	9249011	4060316	2354983	1008142	635130	368375
Denver						
ARIZONA	441371	193762	112382	48109	30309	17579
COLORADO	357853	157097	91117	39006	24574	14253
NEW MEXICO	283282	124361	72129	30878	19453	11283
OKLAHOMA	494772	217205	125979	53930	33976	19706
TEXAS	2557409	1122702	651167	278758	175617	101858
UTAH	185923	81620	47340	20266	12767	7403
Regional Total	4320609	1896747	1100113	470946	296696	172084
San Francisco						
CALIFORNIA	3298995	1448259	839990	359590	226542	131394
NEVADA	86246	37862	21960	9401	5923	3435
Regional Total	3385241	1486121	861950	368991	232465	134829

Region	Total Population: Below Poverty Line	Total Population: In Owner Occupied Housing	Total Population: Affected by LSC Proposal	Elderly Population: Below Poverty Line	Elderly Population: In Owner Occupied Housing	Elderly Population: Affected by LSC Proposal	
Seattle[a]							
ALASKA	52269	22946	13309	5697	3589	2082	
HAWAII	115090	50524	29304	12545	7903	4584	
IDAHO	146733	64416	37361	15994	10076	5844	
MONTANA	118411	51983	30150	12907	8131	4716	
OREGON	344374	151180	87684	37537	23648	13716	
WASHINGTON	496937	218155	126530	54166	34125	19792	
WYOMING	45560	20001	11600	4966	3129	1815	
Regional Total	1319374	579205	335939	143812	90601	52549	Sum
UNITED STATES TOTAL	34398003	15100723	8758419	3749382	2362111	1370024	Sum

[a]Data were not available for all states/territories in these regions.

Statement of Edward I. Koch, Mayor, City of New York, on Proposed Legal Services Regulations

The federal Legal Services Corporation has proposed new regulations which contain drastic changes in the rules governing the eligibility of low-income citizens for free legal services. These regulations would jeopardize the ability of the elderly, the disabled and the recently unemployed to vindicate their legal rights.

The regulations establish eligibility standards which are unrelated to an individual's actual ability to afford adequate legal counsel. For example, the regulations require that liquid and non-liquid assets be taker into account in determining eligibility. Even if an individual's income is below the "maximum income level," the regulations require that the individual is not eligible if the "liquid and non-liquid assets of all members of the applicant's household exceeds $1,500."

This section is illegal in that the Legal Services Corporation statute only allows liquid assets to be counted. It is also unrealistic and would make most of the elderly and recently unemployed population in New York City ineligible for services. Many, if not most, elderly citizens, even those with low or fixed incomes, will have accumulated during the course of their lifetime over $1,500 in non-liquid assets. Similarly, the unemployed and many of the working poor will have over $1,500 in non-liquid assets. It is not realistic, nor fair, to expect that these individuals will sell off their necessities (e.g., homes, specially equipped vehicles for the handicapped, etc.) in order to pay for an attorney if they need one. Nor is it realistic, particularly in the cases of the elderly and disabled, to presume, as the regulations do that the assets of the other members of the household will be available to the individual seeking legal services.

The proposed regulations appear to be part of the Reagan Administration's continuing attempt to cut back on the social welfare programs upon which many of our citizens depend for their survival. These regulations fit neatly into the Administration's strategy of creating a new group of poor persons called the "truly needy." By redefining poverty, the Administration hopes to justify its unfair and mean-spirited cuts in benefits. And, perhaps the most insidious aspect of this scheme is that since the proposed eligibility requirements for free legal services are more restrictive than the eligibility requirements for other benefit programs, many individuals will not be able to secure legal representation if their entitlement to other benefits is threatened. Many such individuals will lose their entitlement to federal benefits such as SSI and will apply for and receive locally-funded public assistance to the fiscal detriment of New York City and other localities.

We urge that the federal government meet the obligations it has to provide services to those in need and to make adequate legal representation available to those who can not afford it. In order to meet this obligation, the Legal Services Corporation should withdraw its proposed regulations.

We will submit a statement for the record with more specific data as to how these regulations will adversely affect the citizens of New York City.

Contrast Between Current and Proposed Legal Services Corporation Regulations and Effect on New York City Residents

1. Maximum income level limit exceptions

Current: Maximum income level can be as high as 125 percent of federal poverty level. Current regulations allow legal services to any person over the limit if there are exceptional circumstances such as health care costs, disability related costs, etc.

Proposed: Sets an *unbreakable* limit. Any person whose income is 150 percent of maximum level can never receive services, even if exceptional circumstances are present.

Effect: Looking at one specific, though not unique, example: $6,550 represents approximately 150 percent of the maximum annual income level for one individual over the age of 65 (assuming that the recipient program sets the maximum income level at 125 percent of the Federal Poverty Income Guidelines). It costs an elderly person in New York City approximately $1,325 per month to have a full time home attendant. If an individual with a home attendant has an annual income of $8,360 ($780 per month) and is participating in the Medicaid Surplus Income Program, that person is paying approximately $380 per month towards his home care, leaving him with only $400 per month for all living expenses. Yet this person would be ineligible for legal services under the proposed regulations, even though his annual income after paying for home care is only $4,560 a year or $380 a month.

2. Assets test—Liquid/non-liquid

Current: Current regulations allow the "taking into account" of only liquid assets.

Proposed: Establishes unbreakable liquid/non-liquid assets test of $1500. If liquid and non-liquid assets of *household* exceeds $1500, must deny legal services regardless of individual's income level. This is lower than standards for SSI ($1500 per individual) and Medicaid ($2700 per individual)

Effect: For example, to be eligible for Medicaid, an individual is allowed to have $2,700 in assets. This inconsistency of standards will have the anomalous effect of making an individual who is considered poor enough to be eligible for Medicaid (as well as for SSI and Food Stamps) not poor enough to be eligible for legal services.

3. Assets test—Presumption of availability of household assets

Current: Current regulations allow taking an individual's liquid assets into account when determining eligibility.

Proposed: Assumes that liquid and non-liquid assets of a household are available to prospective legal services client, whether related or whether the assets are in fact available.

Effect: According to 1980 census figures, approximately 620,000 disabled New Yorkers live in households with others. The median income of the disabled individuals living in such households is about $4,000, which would make them eligible for legal services, provided that the members of the household they live in do not have assets exceeding $1,500. But, the regulations presume that such assets are available to the disabled individual. Such availability is not necessarily the case, particularly in light of the fact that the households within which the disabled persons live have a median income of only $12,000. Even those disabled and elderly who live with their families do not necessarily have access to the liquid and non-liquid assets of the other family members. In addition, the regulations might have the opposite effect of discouraging families from taking in elderly or disabled relatives if the income and assets of such relative could be counted against the family.

4. Assets test—Homes

Current: Equity in a home is not taken into account when determining eligibility.

Proposed: Must make efforts to sell home if equity exceeds $1,500.

Effect: In New York, approximately 95,000 elderly citizens own their own one-family homes. The New York City Department of City Planning estimates that all but a handful of these individuals have over $15,000 in equity in their homes. At the same time, about 20,000 of these elderly homeowners have income from all sources which is less than $7,500. Although they are low-income and would be eligible for legal services under the income test, they will be denied such services because their equity in their homes, which may represent their only savings, exceeds $15,000.

5. Assets test—Automobiles

Current: Equity in a vehicle is not taken into account when determining eligibility.

Proposed: Must make efforts to sell car if equity over $4,500.

Effect: In New York, about 286,553 disabled adults have significant mobility impairments which prevent them from using public transportation. Many of these individuals have specially-equipped vehicles. The cost of accessible vans, hand controls, and other equipment designed to address the disabled individual's specific impairment is quite high. In many cases, New York State vocational rehabilitation programs pick up all or a portion of the cost: that the disabled individual owns the vehicle does not mean that he is not low-income. Yet, at the same time, the unique nature of the vehicle and the expensive equipment therein, results in their having extremely high equity value, making the disabled owners ineligible for legal services no matter what their income level.

6. Special needs of disabled handicapped

Current: Act requires that recipient programs take into account special needs of elderly and handicapped. Regulations permit programs to represent recipients of public assistance without making special determinations as to individual's income and assets.

Proposed: Makes it harder to serve handicapped and elderly. Eliminates automatic ability to represent someone if currently receiving public assistance.

Effect: This requirement works particular hardship on the elderly and handicapped. About 123,000 disabled adults in New York receive SSI benefits. Most, if not all, of these individuals cannot afford legal counsel and should be eligible for legal services. Yet, some of these individuals might have a difficult time articulating the

information necessary for determining their eligibility and others might be intimidated from having to undergo another intrusive interview.

NATIONAL ASSOCIATION OF AREA AGENCIES ON AGING,
Washington, D.C., September 28, 1983.

Hon. MARIO BIAGGI,
U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN BIAGGI: The National Association of Area Agencies on Aging (N4A) which represents the interests of 665 Area Agencies on Aging across the country offers the following comments on the proposed rules which would revise eligibility for legal services through the Legal Services Corporation (LSC).

The Association realizes that the proposed rules were meant to focus resources on those most in need of legal services. However, we do not feel that the Corporation fully understands the adverse impact these proposed changes would have on certain special population groups. Our Association represents Agencies who serve the elderly, we will focus our comments on those proposed regulatory changes which would specifically impact elderly persons.

The elderly have a special need for legal assistance because of difficulties of access and unique legal problems. This special need was explicitly recognized by Congress in the 1977 Amendments to the LSC Act, which incorporated priorities for the provision of legal services. The need for legal services for the elderly is even greater today with the changes in federal policies for public assistance and other benefits. The fulfilment of that special need is now threatened by these proposed rules.

The proposed rules set up a detailed asset test which includes both liquid and non-liquid assets in determining eligibility. The maximum allowable assets, both liquid and non-liquid of an applicant's household, shall not exceed $1,500, except where a household includes a person over age 60, the limit is $3,000. Certain exclusions from this maximum include up to $4,500 equity in a car, $15,000 equity in a home, and $30,000 equity value in farmland.

This test when viewed in light of the circumstances of the typical low-income elderly person will deny legal assistance to a larger number of deserving older persons. At present three million elderly home owners now live below the poverty line. A larger percentage of these individuals would have homes assessed at values greater than $15,000. They would be denied legal assistance because of their home owner status.

A second harmful provision of the proposed changes is the household assets test. For elderly persons living with others, whether related or not, the assets of the entire household are considered in determining an individual's eligibility. While the maximum allowable amount of assets for a household containing an elderly individual is $3,000 (rather than the $1,500 general rule), this provision will exclude a larger percentage of older persons living with their families from receiving legal services. This seems unfair in that it penalizes those elderly persons who are able to live with relatives.

N4A strongly supports the current regulations which require that only a client's liquid net assets be taken into account before they are given legal assistance. No maximum asset level is set nor are non-liquid assets considered.

Section 1611.5(c) of the proposed rules changes the provisions on group representation. The proposed regulations limit representation to groups primarily composed of eligible clients. The current regulations permit representation by groups who lack funds and whose primary purpose is to further the interests of eligible clients.

The proposed changes would adversely affect those older persons in nursing homes, foster homes, or homebound situations because LSC could no longer represent those advocacy groups that represent their interests. N4A therefore, supports the current provision in the rules regarding group representation.

These proposed changes will significantly impact Area Agencies on Aging and OAA-Title III-B Legal Service providers. Persons that will no longer be eligible under these proposed rules will be looking to other legal service agencies for legal needs.

The OAA Title III-B program which funds Social Services (including legal services) has not received increases for three years. There is no way that Title III-B can be expected to fill the gap that will exist if these proposed rules are implemented.

The Network on Aging and LSC have coordinated their efforts to fund the most cost effective legal services program for the elderly. These proposed rules will adversely impact the system that currently are in place across the country.

N4A believes our recommendations are reasonable and realistic. We appreciate the opportunity to comment and will continue to work with LSC to address the legal needs of our nation's elderly.

Sincerely,

RAYMOND C. MASTALISH, *Executive Director.*

NATIONAL ASSOCIATION OF STATE UNITS ON AGING,
Washington, D.C., September 28, 1983.

Hon. MARIO BIAGGI,
Chairman, Subcommittee on Human Services, Select Committee on Aging, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN BIAGGI: The National Association of State Units on Aging would like to commend you for holding a hearing on the proposed rules on client eligibility issued by the Legal Services Corporation. You have clearly brought to Congressional and public attention the very negative impact that these proposals would have on older persons. We would like to share with you our comments which we have submitted to the Legal Services Corporation:

The National Association of State Units on Aging believes that the provisions of the proposed rule will unfairly restrict the access of older persons to legal services. In its 1977 study of age discrimination, the U.S. Commission on Civil Rights found that LSC grantees were greatly underserving eligible persons. One reason sighted for this discrimination was the tendency of some programs to rely on funds provided under age-categorical programs, such as Title III of the Older Americans Act, to substitute for, rather than supplement, the use of Corporation funds to serve older persons.

In the last several years, the aging and legal services networks have worked together to meet the legal service needs of older persons. The Legal Services Corporation is to be commended for its role in fostering cooperative and coordination efforts between aging and legal services programs. For the last two years the Corporation has sponsored conferences on the delivery of legal services to the elderly in conjunction with the annual NASUA/N4A training conference. This past July twenty-five State Units participated in LSC's conference. If the proposed regulations are implemented, however, the progress which has been made by LSC in serving older persons will be severely jeopardized. It has been estimated that between one-half and two thirds of the elderly poor now eligible for LCS service will be excluded under the proposed regulations. NASUA finds provisions in the following areas to be especially harmful to older persons:

Maximum income level;
Maximum allowable asse s;
Group representation; and
Representation of clients receiving benefits from a governmental income maintenance program.

Maximum income level. (Sec. 1611.4): The proposed regulations impose a maximum gross income level (187.5 percent of the OMB Poverty Guideline) above which no client could be served regardless of other factors which would make the client unable to obtain legal services. Currently, factors such as medical expenses and fixed debts can be taken into consideration in determining a person's eligibility for legal services. The proposed provision would have a particularly adverse affect on the oldest and most frail persons who are also most likely to have the highest medical bills. This group, which is presently eligible because their high medical expenses greatly reduce their spendable income, would no longer be able to obtain legal services.

Maximum allowable assets. (Sec. 1611.6): The proposed regulations establish maximum allowable assets, both liquid and non-liquid, of $3,000 per elderly household. Currently only liquid assets are considered in determining eligibility. (No maximum level is set.) The Act states that client eligibility should be determined on the basis of factors which include "the liquid assets" of the client. Congress could have specified non-liquid assets if it intended these to be considered.

The proposed rule provides that the assets of the applicant's entire household be considered. Notwithstanding the $3,000 limit for households with a member age 60 or over, the effect of this regulation will be that most older persons who live with others—even if they maintain separate budgets—will not be able to obtain legal assistance.

In computing assets, the proposed rule would exclude only $15,000 in equity held in a home. Over 3 million older persons living in owner occupied homes have in-

comes below 100 percent of the poverty level. Considering that only 4 percent of the nation's owner occupied single-family homes are valued at under $15,000 and that 70 percent of all older persons own their homes, this provision will exclude millions of older persons from obtaining legal services.

Further, the proposal that a house be counted as an asset is in conflict with the eligibility requirements of other federally funded programs like SSI and Food Stamps. In fact, in 1976 Congress passed an amendment to the SSI statute which excluded the total value of a home in determining eligibility. This action was taken by Congress because older persons were being forced to relinquish their homes in order to receive SSI or attempt to survive without any income.

In computing assets, the proposal would also exclude $4,500 equity in a licensed vehicle. This provision could prevent handicapped adults and seniors who require expensive vehicle adaptations in order to maintain mobility from obtaining legal services. In contrast, the SSI regulations totally exclude one car if it is necessary for employment or for medical treatment or a regular or specific medical problem or if it is modified for the operation by or transportation of a handicapped person.

Finally, the assets test would include the total cash value of IRA or Keogh plans (minus any penalty for early withdrawal) among the countable assets of an individual. Consequently, many persons could be forced to liquidate their pensions in order to obtain legal services making them even more dependent on government programs.

Group representation. (Sec. 1611.5): The proposed regulations would allow representation of a group only if it is composed primarily of eligible clients. The current rule allows representation of a group if it has as its primary purpose furthering the interests of eligible clients and if it cannot obtain funds to retain private counsel. This change will have a particularly adverse affect on nursing home residents access to legal services. Many nursing home residents are isolated from the general public as a result of poor health or immobility.

These person may not be able to organize to adequately represent themselves without the assistance of outside organizations. Having concerns expressed through a community group is also a way to protect themselves from possible retaliation. Throughout the country there are hundreds of local nursing home ombudsman programs which in resolving the complaints of nursing home residents, rely on the assistance of legal service programs. If a LSC grantee cannot assist these organizations, the rights of nursing home residents may go unprotected.

Clients receiving benefits from a governmental income maintenance program. The proposed regulations (Sec. 1611.4) eliminate the current provisions that permits LSC programs to represent clients who are receiving benefits from a governmental income maintenance program, such as SSI, without additional inquiry into their income level. The proposal would require potential clients who have already documented their eligibility for other need-based programs to submit to another eligibility determination procedure to document their financial need for legal assistance. Since it can be assumed that anyone poor enough to be receiving Food Stamps, SSI, or other assistance cannot affort legal assistance, the effect of this provision will be to divert valuable resources from client representation to unnecessarily analyzing eligibility.

While NASUA agrees that limited resources should be focused on those in most need, we also believe that there should be sufficient flexibility for local programs to make judgements about which potential clients should be served. These judgements should be based on the facts of the particular cases rather than on rigid federal formulas. The current regulation on client eligibility provides the necessary local flexibility and at the same time adequately ensures that only the most needy clients receive assistance. Through the current regulation local programs currently have the authority to establish case priorities and to set income limits below existing maximum levels in order to serve those most in need. In addition, local programs are governed by a local non-profit board of directors which can tailor their program to the needs of the local community.

The effect of the proposed regulations if enacted, will be to undermine the Congressional mandate that LSC grantees adopt procedures for determining and implementing case priorities which take into account "the needs for services of clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals)". The proposed regulations establish new barriers to access to legal services for older persons. We, therefore, recommend that they be withdrawn in their entirety.

Thank you for this opportunity to express our concerns on this critical matter. Your leadership role in protecting the rights of the poor elderly to receive legal as-

sistance is fully appreciated and supported by the National Association of State Units on Aging.

Sincerely,

DANIEL QUIRK, *Executive Director*

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